Feb 2. Postponed

Feb 10 Postponed
Feb 16 Ruled down

SUPREME COURT OF THE UNITED STATES.

No. ~~218.~~ 130

SAMUEL N. PARMALEE, APPELLANT,

vs.

ANDREW J. SIMPSON.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEBRASKA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 218.

SAMUEL N. PARMALEE, APPELLANT,

vs.

ANDREW J. SIMPSON.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEBRASKA.

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1 THE UNITED STATES OF AMERICA,
Territory of Nebraska, ss:

Proceedings had in the supreme court of the Territory of Nebraska, at the June term thereof, begun and held at the capital of said Territory on the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-four, and adjourned by order of said court until the eighteenth day of July, in the year aforesaid, and at which were present the following named officers of said court: Honorable William P. Kellogg, chief justice; Elmer S. Dundy, associate justice; William F. Lockwood, associate justice; Daniel Gantt, esq'r, attorney for United States; Phineas W. Hitchcock, esq'r, United States marshal; John H. Kellom, clerk of said court.

SAMUEL N. PARMALEE, appellee,
vs.
ANDREW J. SIMPSON, appellant.

Be it remembered, that on the twenty-fourth day of June, one thousand eight hundred and sixty-four, came into the said supreme court the said Andrew J. Simpson, appellant, by Messrs. Redick & Briggs, his solicitors, and filed in the office of the said clerk of said court a transcript of the record of certain proceedings duly had and taken in the district court of said Territory, for the first judicial district and county of Douglas, a true copy of which transcript is hereto annexed and marked Exhibit A.

2 And afterwards, at the aforesaid June term of said supreme court, and on the twenty-fifth day of July, one thousand eight hundred and sixty-four, Honorable William P. Kellogg, chief justice, and Honorable Elmer S. Dundy, associate justice, presiding, this cause came on duly to be heard and determined upon said transcript so as aforesaid filed in said court, and thereupon the following proceedings were duly had:

In supreme court of the Territory of Nebraska, in chancery.

SAMUEL N. PARMALEE
vs.
JAMES G. MEGEATH *et al.*

And now, this 25th day of July, 1864, this cause having come on to be heard upon an appeal from the district court of Douglas County, said Territory, and the court having heard the arguments of the respective counsel of the parties, complainant and defendants, and being fully advised in the premises, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause, as against appellant Andrew J. Simpson, be, and the same is hereby, reversed, and the bill of complaint dismissed with costs, and that said appellant, Andrew J. Simpson, recover against said Samuel N. Parmalee his costs herein expended, taxed at $, and that he have execution therefor.

And it is further ordered, adjudged, and decreed that all proceedings had in said district court be, and the same are hereby, set aside and held for nought so far as the same affects the said A. J. Simpson. And thereupon the said appellee, Samuel N. Parmalee, prayed an appeal from this decree to the Supreme Court of the United States.

By the court.

WM. P. KELLOGG, *Ch. J.*
E. S. DUNDY, *Associate Justice.*

3 And thereupon, afterwards, to wit, on the second day of August, one thousand eight hundred and sixty-four, was filed in this office an order fixing penalty of bond for supersedeas, and a copy of the same, by An-

drew J. Poppleton, esq., solicitor for Samuel N. Parmalee, who appeals from the decree of this court to the Supreme Court of the United States, which is in the words and figures following, to wit:

In the supreme court of the Territory of Nebraska.

SAMUEL N. PARMALEE, appellee,
vs.
ANDREW J. SIMPSON, appellant.

An appeal from the final decree rendered on Tuesday, the 26th day of July, 1864, in said court in this cause, reversing the judgment of the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, to the Supreme Court of the United States, having been prayed and claimed in open court at the time of the rendition of said decree by said Samuel N. Parmalee, appellee, and having been allowed accordingly, and the aforesaid appellee having applied to the chief justice of the supreme court of the said Territory to fix the amount and penalty of the bond to be given by said appellant in order to cause said appeal to operate as a supersedeas of said final decree, the amount and penalty of said bond is hereby fixed at the sum of five thousand dollars.

July 30th, 1864.

WM. P. KELLOGG, *Chief Justice, N. T.*

And thereupon, on the same day and year aforesaid, was filed in this office a bond for supersedeas of decree in supreme court, and copy of the
4 same, by Andrew J. Poppleton, solicitor for Samuel N. Parmalee aforesaid, which is in the words and figures following, to wit:

Know all men by these presents that we, Samuel N. Parmalee, as principal, and Samuel A. Megeath and James K. Ish, as sureties, are held and firmly bound unto Andrew J. Simpson in the just and full sum of five thousand dollars, to be paid to the said Andrew J. Simpson, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this thirtieth day of July, A. D. 1864.

Whereas, lately, at a term of the supreme court of the Territory of Nebraska, begun and held on the eighteenth day of July, A. D. 1864, in a suit depending in said court between Andrew J. Simpson, appellant, and Samuel N. Parmalee, appellee, a final decree was rendered against the said Samuel N. Parmalee, appellee, reversing the decree of the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in said cause, and the said Samuel N. Parmalee having, in open court, at the time of the rendition of said final decree, prayed and claimed an appeal to the Supreme Court of the United States, which was allowed accordingly:

Now the condition of the above obligation is such that if the said Samuel N. Parmalee shall prosecute his appeal to effect, and answer all dam-
5 ages and costs if he fail to make his plea good, then the above obligation is to be void; otherwise, to remain in full force and effect.

SAMUEL N. PARMALEE,
By his solicitor, A. J. POPPLETON, *Principal.*
SAMUEL A. MEGEATH, *Surety.*
JAMES K. ISH, *Surety.*

Sealed and delivered in presence of—
R. C. BARNARD.

Approved by—
W. P. KELLOGG,
Chief Justice S. Court, Nebraska Territory.

THE TERRITORY OF NEBRASKA, *County of Douglas, ss:*

I, J. H. Kellom, clerk of the supreme court of the Territory of Nebraska, do hereby certify that the foregoing copy is a true and faithful transcript of all the records and proceedings had in the above-entitled cause, so full and entire as the same remain on file and entered of record in this office.

Witness my hand and official seal at Omaha, N. T., this 15th day of October, A. D. 1864.

J. H. KELLOM, *Clerk of Sup. Court.*

6 EXHIBIT A.

Being a true copy of a transcript of the record of the district court, filed in the supreme court of said Territory, as is above stated.

UNITED STATES OF AMERICA,
The Territory of Nebraska, County of Douglas, ss:

Pleas before the district court, in chancery, of the first judicial district, Territory and county aforesaid.

Be it remembered, that at a regular term of the district court of the first judicial district of the Territory of Nebraska, appointed to be held at the court-house, in the city of Omaha, in the county of Douglas, on Tuesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-one—present, Honorable William P. Kellogg, judge of said district court, Thomas L. Sutton, sheriff of Douglas County, and John H. Kellom, clerk of said court—the following proceedings were had:

Heretofore, to wit, on the 26th day of August, A. D. 1861, the complainant, Samuel N. Parmalee, by his solicitor, filed in the clerk's office his bill of complaint, upon which his action was founded, and the same was in the words and figures following, to wit:

7 In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

To the Honorable Wm. P. Kellogg, judge of said court:

Your orator, Samuel N. Parmalee, of the city of Omaha, in the county of Douglas and Territory of Nebraska, complaining, shows unto your honor that on the 7th day of April, A. D. 1858, at the said city of Omaha, James G. Megeath and George C. Bovey, then of said city, executed and delivered to Robert B. Whitled, of Grayson County, in the State of Texas, their joint and several promissory note for the sum of four thousand five hundred dollars, payable six months after date, with interest at the rate of one per cent. per month from date until paid, a copy of which said note is hereunto attached and marked "Schedule A," which your orator prays may be taken as a part of this your orator's bill.

Your orator further shows unto your honors that for the purpose of securing to the said Robert B. Whitled the payment of the said note when the same should become due, and the interest accruing thereon at the time when it should become due, the said James G. Megeath and Virginia C. Megeath, his wife, and the said George C. Bovey did on the seventeenth day of April, A. D. 1858, in due form of law, execute and deliver to the said Robert B. Whitled a certain indenture of mortgage conditioned for the payment of the said promissory note above described, at the time and in the manner set forth in said note, and the interest thereon accruing at the time when
8 it should become due, and likewise further conditioned that *that* if the amount specified in said note cannot be paid (by a reasonable exertion) at the expiration of six months, then the said note is to be extended for

six months from the time it is due, and the condition of the mortgage to extend for the same length of time, without default or subject to foreclosure; and by which said mortgage, the said morgtagor mortgaged unto your orator in fee, all those certain lands and real estate, with their appurtenances, described and set out in full in the copy of said mortgage hereunto annexed, and marked "Schedule B," (and which your orator begs may be taken as a part of this your orator's bill,) which said mortgage was on the 17th day of April, A. D. 1858, duly acknowledged, and on the same day duly recorded in the office of the register of deeds, in Book A of Mortgages, on page 67, as by the said mortgage and the certificate of acknowledgment and of the recording aforesaid thereon endorsed, and ready to be produced, will more fully appear.

Your orator further shows unto your honor that the said note and mortgage were by the said Whitled, on the 17th day of May, A. D. 1861, duly assigned to your orator for a valuable consideration, and are now held and owned by your orator, a copy of which said assignment is hereunto attached and marked "Schedule C," and which your orator begs may be taken as a part of this your orator's bill.

And your orator further shows unto your honor that he verily believes there is now due you orator on said note and mortgage the sum of four thousand seven hundred and sixty-four dollars and cents, and
9 that no proceedings at law have been had to recover this debt secured by said note and mortgage, or any part thereof.

Your orator further shows unto your honor that Andrew J. Simpson has or claims to have some interest in the said mortgaged premises or some part thereof.

Your orator therefore asks the aid of this court in the premises, and that the above-named James G. Megeath and Virginia C. Megeath, his wife, and George C. Bovey and Andrew J. Simpson, the defendants in this suit, may appear before your honor in the above-named court, and on the equity side thereof, and answer this your orator's bill according to the rules and practice of this court, without oath, (their answer on oath being hereby expressly waived,) and that the usual decree may be made for the sale of the said mortgaged premises and for the payment of the amount due to your orator for principal and interest upon the said note and mortgage, and his costs of suit, and that the said defendants and all persons claiming under them and all other persons, though not parties to this suit, who have any liens by judgment or decree upon the mortgaged premises subsequent to the said mortgage or any liens or claims thereon by or under any such subsequent judgment or decree, either as purchasers, incumbrancers, or otherwise, may be barred and foreclosed of all equity of redemption to the said premises, and that your orator may have such further and such other relief as the nature of the case may require and as to this court may seem proper
10 and agreeable to equity.

May it please your honor to grant unto your orator the writ of subpœna, issued according to the course and practice of this court, to be directed to the said defendants, commanding them, at a certain day to be therein named, to be and appear before your honor, answer the premises, and stand to and abide such order and decree as to your honor shall seem agreeable to equity.

ANDREW J. POPPLETON, *Sol. for Complainant.*

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Samuel N. Parmalee, being duly sworn, deposes and says that he is the complainant in the above bill of complaint; that he has heard the same read and knows the contents thereof, and that the same is true of his own

knowledge, except those matters which are therein stated to be on information and belief, and as to those he believes it to be true.

SAMUEL N. PARMALEE.

Subscribed in my presence and sworn to before me this 26th day of August, A D. 1861.

E. B. CHANDLER, *Clerk*,
By JNO. H. KELLOM, *Deputy*.

SCHEDULE B.

In consideration of the sum of four thousand five hundred dollars, the receipt of which is hereby acknowledged, we, James G. Megeath and Virginia C. Megeath and George C. Bovey, of the county of Douglas and
11 Territory of Nebraska, do hereby sell and convey to Robt. B. Whitled, of Grayson County, in the State of Texas, the following described property, to wit: Commencing at quarter section corner at the centre of section twenty-eight in township fifteen north, of range thirteen east of the 6th principal meridian; thence south 54° 30′; thence east 26 50-100 chains; thence south 3 25-100; thence south 36° 30′; thence west 16 25-100 chains; thence south 67° 30′; thence west 7 12-100; thence south to the northwest corner of Crawford lot; thence south 41° west 4 55-100 to the quarter section corner; then north 40 chains on the centre section line to the place of beginning. Also the southwest quarter of section twenty-eight aforesaid, and the east half of the southeast quarter of section twenty-nine, and the east half of the west half of the southeast quarter of said section twenty-nine, and township and range aforesaid. And we do hereby covenant with the said Rob't B. Whitled that we are lawfully seized of the premises above-described; that they are free from incumbrance. And we do hereby further covenent to warrant and defend the said described premises against the lawful claims of all persons whomsoever.

The above conveyance is subject to the following conditions, to wit: that whereas a certain promissory note, drawn jointly by James G. Megeath and George C. Bovey, in favor of Robert B. Whitled for the sum of four thousand five hundred dollars, payable in six months from the seventh day of April, A. D. 1858, with interest at one per cent. per month from date: Now, if the said James G. Megeath and Geo. C. Bovey pay or cause to be paid
12 the amount of said note, on or before the maturity, and save harmless therefrom the said Robt. B. Whitled, then this obligation to be void; otherwise, of full force and virtue.

The said note is also subject to the following condition, viz: that if the amount specified in said note cannot be paid (by reasonable exertion) at the expiration of six months, then the said note is to be extended for six months from the time it is due, and the conditions of this mortgage to extend for the same length of time without default or subject to foreclosure.

Witness our hands this 17th day of April, A. D. 1858.

JAS. G. MEGEATH. [SEAL.]
VIRGINIA C. MEGEATH. [SEAL.]
GEORGE C. BOVEY. [SEAL.]

Attest: HARRISON JOHNSON.
A. L. KING.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

On this 17th day of April, A. D. 1858, before me, appeared the above-named James G. Megeath and Virginia C. Megeath, his wife, and George C. Bovey, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed.

[SEAL.] A. L. KING, *Notary Public*.

SCHEDULE C.

For value rec'd I hereby assign all my right, title, and interest in and to the foregoing mortgage to Samuel N. Parmalee, of Omaha, N. T.
13 May 17th, 1861.

R. B. WHITLED.

Witness: W. F. SAPP.

SCHEDULE A.

$4,500. OMAHA CITY, N. T., *April 17th*, 1858.

Six months after date, for value received, we, or either of us, promise to pay to Robert B. Whitled, or order, the sum of four thousand five hundred dollars, together with interest thereon at the rate of one per cent per month from the 7th day of April, A. D. 1858, until paid.

JAMES G. MEGEATH. [SEAL.]
GEORGE C. BOVEY. [SEAL.]

And thereupon, on the same day and year aforesaid, to wit, on the 26th day of August, A. D. 1861, there was issued out of the clerk's office of said court a subpœna, which was in the words and figures following, to wit:

The Territory of Nebraska to James G. Megeath, Virginia C. Megeath, and Andrew J. Simpson, greeting:

We hereby command you and each of you that you appear in our district court of the first judicial district, within and for the county of Douglas, in chancery, on the 30th day of September, 1861, to answer a bill of complaint exhibited against you in our said court by Samuel N. Parmalee, and do further and receive what our said court shall have considered in that behalf.

The sheriff of Douglas County will make return of this subpœna,
14 on the 9th day of Sept., A. D. 1861.

Witness Hon. Wm. P. Kellogg, judge of our said court, the 26th day of August, 1861.

E. B. CHANDLER, *Register*,
By JNO. H. KELLOM, *Deputy*.

A. J. POPPLETON, *Solicitor*.

On which said subpœna were endorsed the following words and figures, to wit: No. 201. District court, Douglas County, in chancery. Samuel N. Parmalee *vs.* James G. Megeath *et al*. Subpœna in chancery. Rec'd for service August the 26th, 1861, at 2 o'clock p. m., and served on same day upon the within Andrew J. Simpson, by delivering to him personally a copy thereof.

JOHN C. HILEMAN, *Sheriff, Douglas Co.*

Sheriff's fees.

Ser	$0 40
Copy	20
Mileage	10
	70

Filed Aug. 30, 1861.

E. B. CHANDLER, *Register*,
By JNO. H. KELLOM, *Deputy*.

And thereupon, on the same day and year, to wit, on the 26th day of August, A. D. 1861, the said complainant filed in the office of the clerk of said court his affidavit for an order of publication, which affidavit was in the following words and figures, to wit:

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

SAMUEL N. PARMALEE, complainant,
vs.
JAMES G. MEGEATH, VIRGINIA C. MEGEATH, GEORGE C. BOVEY, and Andrew J. Simpson.

15 TERRITORY OF NEBRASKA, *Douglas County, ss:*

Samuel N. Parmalee, being duly sworn, deposes and says that he is the complainant in the above-entitled cause; that the said cause is instituted for the foreclosure of a mortgage executed by the said defendants, Jas. G. Megeath, Virginia C. Megeath, and George C. Bovey, to one Robert B. Whitled, and by him assigned in due form of law to deponent, the object of said suit being to enforce the lien created by said mortgage upon the lands and real estate described therein. Deponent also saith that the said George C. Bovey, one of the defendants, is a non-resident of this Territory, and cannot therefore be served personally with subpœna issued by said court. Wherefore deponent prays an order directing service by publication in said cause upon the said George C. Bovey.

SAMUEL N. PARMALEE.

Subscribed in my presence and sworn to before me this 26th day of August, A. D. 1861.

E. B. CHANDLER, *Clerk*,
By J. H. KELLOM, *Deputy.*

Upon which said affidavit were endorsed the following words and figures, to wit: 201. In district court, Douglas County. In chancery. Samuel N. Parmalee vs. James G. Megeath *et al.* Affidavit for order of publication.

Let notice of publication be had against the defendant George C. Bovey, in the Omaha Nebraskian, a newspaper printed and published in the
16 said county of Douglas, for five insertions, according to law.
Aug. 26th, 1861.

JAMES G. CHAPMAN, *Master in Chancery.*

Filed Aug. 26, 1861.

E. B. CHANDLER, *Clerk*,
By JNO. H. KELLOM, *Deputy.*

A. J. POPPLETON, *Sol. for Compl't.*

And afterwards, to wit, on the 11th day of October, A. D. 1861, the said defendant Andrew J. Simpson filed his demurrer to said complainant's said bill of complaint; which said demurrer has been lost from the papers on file in said cause and cannot be found.

And afterwards, to wit, on the 17th day of October, A. D. 1861, the said demurrer was overruled by said court—present William P. Kellogg, judge—in the words and figures following, to wit:

SAMUEL N. PARMALEE
vs.
ANDREW J. SIMPSON *et al.*

This day came on this cause for hearing upon the demurrer of the defendant Andrew J. Simpson, by him filed in this cause. Whereupon the said defendant submits to have said demurrer overruled, which is accordingly done, and with leave to file his answer to the said complainant's bill of complaint on the morning of Saturday the 19th day of October, 1861.

And, to wit, on the 15th day of October, A. D. 1861, there was filed
17 in the office of the clerk of said court an affidavit of the publication of

notice to said defendant George C. Bovey, with the said notice attached; which notice and affidavit were in the words and figures following, to wit:

To George C. Bovey, defendant:

You are hereby notified that there is now on file in the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, a bill of complaint filed by Samuel N. Parmalee against yourself and James G. Megeath, Virginia C. Megeath, and Andrew J. Simpson, the object and prayer of which said bill is to foreclose a certain mortgage executed by you and the said James G. and Virginia C. Megeath on the 17th day of April, A. D. 1858, to Robert B. Whitled, and by him duly assigned to said Parmalee upon the following described real estate, namely, commencing at quarter section corner at the centre of section twenty-eight, in township fifteen north, of range thirteen east of the sixth principal meridian; thence south 54 deg. 30 min.; thence east 26 50-100 chains; thence south 3 25-100; thence south 36 deg. 30 min.; thence west 16 25-100 chains; thence south 67 deg. 30 min; thence west 27-100; thence south to the northwest corner of Crawford's lot; thence south 41 deg. west 4 55-100 to the quarter section corner; thence north *north* 40 chains on the centre section line to the place of beginning. Also the southwest quarter of section twenty-eight aforesaid, and the east half of the southeast ¼ of section twenty-nine, and the east half of the west half of the southeast quarter of said section twenty-nine, township and range aforesaid, executed to secure the payment of a promissory note made by James G. Megeath and yourself, the said Bovey, of date April 7th, 1858, for the sum of four thousand five hundred dollars, payable six months after date, with interest at the rate of one per cent. per month.

18

You are required to plead, answer, or demur to said bill on or before the 14th day of October, A. D. 1861, or default will be executed against you and a decree entered accordingly.

August 27th, 1861.

A. J. POPPLETON, *Sol. for Compl't.*

TERRITORY OF NEBRASKA, *County of Douglas, ss:*

I, George W. Rust, clerk of the Omaha Nebraskian office, being duly sworn, on my oath do say that the notice hereunto attached was published for four consecutive weeks next after the 31st day of August, A. D. 1861, in the Omaha Nebraskian, a newspaper published by Merrills H. Clark and printed in said county of Douglas, and which was during that time in general circulation in said county.

GEORGE W. RUST,
Clerk of the Nebraskian Office.

Sworn to and subscribed before me this 15th day of October, A. D. 1861.
J. H. KELLOM, *Clerk.*

Fees: Publication	$12 00
Affidavit	25
	12 25

On which said affidavit were endorsed the following words and figures, to wit:

"No. 201. Filed October 15, 1861.

"J. H. KELLOM, *Reg'r.*"

And afterwards, to wit, on the 16th day of October, A. D. 1861, the
19 entry of appearance of the said defendants, James G. Megeath and Virginia C. Megeath, made by A. J. Poppleton, solicitor for said defendants, was filed in said clerk's office; which said entry of appearance was in the words and figures following, to wit:

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

SAMUEL N. PARMALEE
vs. } 201.
GEORGE C. BOVEY *et al.*

I hereby enter the appearance of *of* James G. Megeath and Virginia C. Megeath, defendants in the above-entitled cause.

Omaha, Oct. 14, 1861.

A. J. POPPLETON,
Sol. for Def'ts J. G. and V. C. Megeath.

On which said entry of appearance were endorsed the following words and figures, to wit:

201. District court, Douglas County, in chancery. Samuel N. Parmalee *vs.* George C Bovey *et al.* Appearance of J. G. and V. C. Megeath. A. J. Poppleton, solicitor.

Filed Oct. 16, 1861.

JOHN H. KELLOM, *Register.*

And thereupon afterwards, to wit, on the 17th day of October, A. D. 1861, the said bill of complaint was by an order of said court, William P. Kellogg, judge, taken as confessed against the said defendants George C. Bovey, James G. Megeath, and Virginia C. Megeath; which said order is in the words and figures following, to wit:

20 In district court, Douglas County, in chancery.

SAMUEL N. PARMALEE
vs.
GEORGE C. BOVEY, JAMES G. MEGEATH, VIRGINIA C. MEGEATH, and Andrew J. Simpson.

Due proof of service of process upon the defendant George C. Bovey and the said James G. and Virginia C. Megeath, defendants, having voluntarily entered their appearance therein, and the aforesaid defendants having likewise failed to plead, answer, or demur within the time limited by law and the rules of this court, on motion of A. J. Poppleton, solicitor of the said complainant, it is ordered that the said bill be taken as confessed against the said defendants Geo. C. Bovey, James G. Megeath, and Virginia C. Megeath.

And thereupon afterwards, to wit, on the 19th day of October, A. D. 1861, the said defendant Andrew J. Simpson filed in the office of the clerk of said court his answer to said bill of complaint; which said answer is in the words and figures following, to wit:

In the district court for Douglas County, in chancery.

SAMUEL N. PARMALEE, complainant,
vs.
JAMES G. MEGEATH, ANDREW J. SIMPSON, *et al.*, defendants.

The several answer of Andrew J. Simpson, one of said defendants.

This defendant, now and at all times saving and reserving to himself all

advantage and benefit of exception to the errors and imperfections contained in the bill of complaint of said complainant, for answer thereto, or so
21 much thereof as he is advised is material for him to answer, he, answering, denies each and every allegation therein contained, except what is hereinafter admitted.

This defendant admits the making and execution of the note and mortgage referred to in said bill, and also the recording of said mortgage as is therein alleged; and def't further admits that no proceedings at law have been had to enforce said note and mortgage; but this defendant cannot either admit or deny what is due on said note and mortgage as is alleged in said bill, but leaves the complainant to his proof on that point.

And the said defendant says that he is the lawful owner of a portion of the premises and lands described in said mortgage and bill, and was such lawful owner at the time said mortgage and note were executed and for some time before, which portion of said lands owned by this def't as aforesaid are described as follows, to wit: the east half of the southeast quarter of section 29, and the west half of the southwest quarter of section 28, all in township 15 north, of range 13 east, in Douglas County, Nebraska. And this defendant says that he was so seized of said premises in fee simple on the 15th day of April, A. D. 1858, by virtue of a deed from the said George C. Bovey, and that on the same day said deed was duly recorded (after having been duly acknowledged) in the register's office of said county, to which this defendant asks leave to refer for greater certainty, and that this defendant paid to said Bovey a valuable and adequate consideration therefor, as is expressed in said deed.

And this defendant, further answering, says that some time in the
22 month of August, A. D. 1860, this defendant learned for the first time that a pretended deed purporting to have been made and executed by this defendant to said George C. Bovey conveying the said premises, bearing date 17th day of April, A. D. 1858, but without being duly acknowledged, was upon the records of the said register's office, but this defendant positively alleges that said pretended deed is a forgery; that this defendant never executed said deed, or any other, conveying the said premises or any part thereof; that this defendant never received any consideration for said pretended deed from said Bovey or anybody else, nor did this defendant ever authorize any one to execute said deed for him; that the signature to the same is not this defendant's, but is a forgery, as aforesaid.

And this defendant further says that he is the real and lawful owner of said premises as above stated, and that he has never parted with his title to said premises or any interest therein to any one since he purchased the same from said Bovey on the said 15th day of April, 1858. And this defendant further says that the said defendant Bovey had no right or authority to execute the said mortgage on the said premises, nor had the said Megeath any such right or authority.

And this defendant, further answering, denies that said complainant is the owner of said note and mortgage, as he is informed and believes, but this defendant says that if said complainant purchased the same he did so with full knowledge of all the equities and rights of this defendant in
23 said premises and with full knowledge of said fraudulent and forged deed.

All which matters and things this defendant is ready to prove and maintain as this honorable court shall direct, and prays hence to be dismissed with his costs and charges in this behalf most wrongfully expended and sustained.

REDICK & BRIGGS, *Solicitors for Def't Simpson.*

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Andrew J. Simpson, being by me first duly sworn, deposes and says that he is the defendant mentioned in the above answer; that he has heard the same read, and knows the contents thereof; and that the same is true, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

A. J. SIMPSON.

Subscribed in my presence and sworn to before me this 18 day of October, A. D. 1861.

JNO. H. KELLOM, *Register.*

And afterwards, to wit, on the 22d day of October, A. D. 1861, the said complainant, Samuel N. Parmalee, filed in the office of the clerk of said court his replication to the answer of said defendant Andrew J. Simpson, which said replication was in the words and figures following, to wit:

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

24 SAMUEL N. PARMALEE
vs.
JAMES G. MEGEATH *et al.*

The replication of Samuel N. Parmalee, complainant, to the answer of Andrew J. Simpson, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by said bill he has already prayed.

A. J. POPPLETON, *Solicitor for Compl't.*

And thereupon afterwards, to wit, on the 30th day of October, A. D. 1861, an order of reference to Daniel Gantt, esq., master in chancery, was made by said court, William F. Lockwood, judge; which said order of reference,
25 filed and entered on the journal on said 30th day of October, 1861, was in the words and figures following, to wit:

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

SAMUEL N. PARMALEE
vs.
GEORGE C. BOVEY *et al.*

Due proof of service of process in the above-entitled cause upon the defendant George C. Bovey having been heretofore filed, and the defendants James G. Megeath and Virginia C. Megeath having voluntarily entered their appearance therein, and all the above-named defendants failed to plead, answer, or demur within the time limited by law, and the said cause being at

issue upon the answer of Andrew J. Simpson, the remaining defendant, on motion of A. J. Poppleton, solicitor for complainant, it is ordered that said cause be referred to Daniel Gantt, esquire, one of the masters of this court, to compute and ascertain the amount due to said complainant on the note and mortgage mentioned in said bill, and to take proof of the facts and circumstances stated in said bill and the answer of said defendant Simpson, and report the amount so due and all such proofs and examinations to this court with all convenient speed.

By the court. WM. F. LOCKWOOD, *Judge.*

26 And thereupon afterwards, to wit, on the 31st day of October, A. D. 1861, notice of taking testimony before said master was filed in said clerk's office; which said notice was in the words and figures following, to wit:

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

SAMUEL N. PARMALEE
vs
ANDREW J. SIMPSON *et al.*

GENTLEMEN: You are hereby notified that on the fifth day of November, (Tuesday,) at the office of Daniel Gantt, esquire, one of the masters of this court, in the city of Omaha, and at ten o'clock a. m. of said day, William F. Sapp and Charles W. Hamilton, of the said city, will be examined as witnesses on behalf of the above complainant in this cause. You are also notified to attend and cross-examine.

Omaha, Oct. 31, 1861.

A. J. POPPLETON, *Sol. for Compl't.*

REDICK & BRIGGS, *Sol. for Def't Simpson.*

On which said notice were endorsed the following words and figures, to wit:

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Andrew J. Poppleton, being duly sworn, deposes and says that on the 31st day of October, A. D. 1861, he served the within notice on the within-named defendant, Andrew J. Simpson, by delivering to Messrs. Redick &
27 Briggs, his solicitors, a true copy thereof in person.

ANDREW J. POPPLETON.

Subscribed in my presence, and sworn to before me this 4th day of November, A. D. 1861.

J. H. KELLOM, *Register.*

And thereupon, to wit, on the 23rd day of May, 1862, the following depositions were filed, in the words and figures following, to wit:

Depositions of witnesses taken in an action pending in the district court of Douglas County, in the Territory of Nebraska, wherein Samuel N. Parmalee is complainant and Andrew J. Simpson *et al.* are defendants, and for said complainant in pursuance of the notice hereto attached.

Alfred Sayre, of the county of Arapahoe, and Territory of Colorado, of lawful age, being first duly sworn by me as hereinafter certified, deposes as follows:

Question 1st by compl't. What is your age, occupation, and place of residence?

Answer. I am twenty-eight years old. Am engaged in mining, and reside in Arapahoe County, Colorado Territory.

Question 2d by compl't. Where did you reside, and in what business were you engaged in the month of April, A. D. 1858? In connection with whom were you doing business? In whose office were you, and what office did you hold? Whether you had a seal of office; where the same was kept, and to whom the same was accessible. State fully.

28 Answer. In the spring of 1858 I was residing in the city of Omaha, Nebraska Territory; was practising law with Jonas Seeley, and in his office; was a notary public for Douglas County, Nebraska Territory. Had a seal of office, which was always kept in our law office sitting upon a table or desk, accessible to all persons. The office was frequently left unlocked while my partner and myself were both absent.

Question 3d by compl't. Are you acquainted with George C. Bovey, the defendant? If so, state where, when, and how long you have known him.

Answer. I am acquainted with Geo. C. Bovey; have known him the summer of 1857, in the city of Omaha, Nebraska Territory.

Question 4th by compl't. Please examine the papers hereunto attached, marked Schedule A, and state whether or not the instrument of which the same is certified by the register of deeds of Douglas County to be a true copy, was executed or acknowledged before you or in your presence.

Answer. I am quite positive that such an instrument was not acknowledged or executed before me.

Question 5th by compl't. State whether or not you witnessed or took the acknowledgment of any deed or deeds executed by the said George C. Bovey, in the month of April, A. D. 1858, or at any other time. If so, state what ones.

Answer. I have no recollection that any deed or deeds were executed before me by the said Bovey at the time specified. I think some time after that some were, but not of the land described in the attached deed.

Question 6th by compl't. How do you spell your name? How did you spell your name on the fifteenth day of April, A. D. 1858?

29 Answer. I both now and always have spelled my name Sayre.

Question 7th by compl't. State all you know in respect to the genuineness or the false or fraudulent character of the acknowledgment of the instrument of which the paper marked Schedule A purports to be a copy. Likewise in respect to the genuineness or false or fraudulent character of the signature thereunto appended as acknowledged notary public and subscribing witness.

Answer. My surname is mispelled in the last two letters as subscribing witness and notary. I never wrote certificates of acknowledgment with the phrase "Be it remembered," and was in the habit, when signing my name officially, to write the words "notary public" in full, and not "N. P."

Question 8th by compl't. Had you in the month of April, A. D. 1858, a notarial seal? If so, where was it kept, and whether accessible or not to the said Bovey, or any other person beside yourself?

Answer. My answer is found in the answer to question No. 2. It was accessible to Bovey—*i. e.*, the seal.

Question 9th by compl't. State whether or not the said Bovey during the month of April, A. D. 1858, executed any conveyance or instrument purporting to convey land or real estate to Andrew J. Simpson or any other person in your presence.

Answer. I have no recollection that the said Bovey did execute any such deed at the time specified, and am certain that he did not.

Question 10th by compl't. State any other matter or things which you know in relation to the genuineness of the instrument marked Sched-

30 ule A purports to be a copy, or in regard to the genuineness of the signature of the acknowledging notary and subscribing witnesses.

Answer. During the winter of 1859 and 1860 I was negotiating for the land described in the attached deed as the agent of Mr. Bowles of New York, and at that time had no knowledge of the deed attached, and would probably have recollected it if it had been executed before me. I think of nothing further than what is found in my answer to question No. 7.

Cross-examination.

Question 1st by def'ts. Did you not take a large number of acknowledgments of deeds and other instruments in spring of 1858, as notary public of Douglas County, Neb., and might not George C. Bovey have come before you and acknowledged the said deed to said A. J. Simpson, and you now have forgotten it?

Answer. In the spring of 1858 I took the acknowledgment of some deeds, but not of a large number. It is barely possible that I might have acknowledged a deed from the said Bovey to A. J. Simpson, but I have no recollection of the matter, and I do not believe it occurred.

Question 2nd by def'ts. Were you not in the habit of writing the last two letters of your name in Sayre very indefinite, so they would read either "er or re"—say like this: [see manuscript,] and whether some persons did not spell your name "Sayer?" Might not the mistake have been in the recorder in copying the deed upon the record, and whether you know of the recorder making any such mistakes before, and whether you were not in the
31 habit of keeping your notary seal in your desk locked up?

Answer. I always intended to write my name plainly, and believe that I did. Persons acquainted with me and my writing always wrote my name Sayre, and I never knew of the recorder in 1858 mispelling my name. I never had my notarial seal in a desk locked up.

ALFRED SAYRE.

In presence of—CHAUNCEY BARBOUR.

TERRITORY OF COLORADO, *Arapahoe County, City of Denver, ss:*

I, Chas. A. Cook, mayor of the city of Denver, Territory and county aforesaid, do hereby certify that the above-named Alfred Sayre was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition by him subscribed was reduced to writing by Chauncey Barbour, a disinterested person, and were written and by the said Chauncey Barbour subscribed as witness in my presence, and were taken at the time and place specified in the notice hereunto attached.

Witness my hand and the corporate seal of the city of Denver this 13th day of May, A. D. 1862.

[SEAL.] CHAS. A. COOK, *Mayor.*

And the taking of the above deposition was commenced on the 13th
32 day of May, A. D. 1862, and was closed on the same day.

CHAS. A. COOK, *Mayor.*

Fees of officers: Mayor's fee	$2 50
Clerks' fee	2 50
	5 00
Witness's fee	1 50
Mileage, 85 miles	12 75
Costs paid by complainant.	19 25

Commission, issued April 11th, 1862.

The district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery, to the mayor of the city of Denver, Col. Ter., greeting:

Know you that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize and require you to examine, upon interrogatories annexed to this commission, Alfred Sayre, esq., of Colorado Territory, in a certain cause pending in this court, wherein Samuel N. Parmalee is complainant and Andrew J. Simpson *et al.*, defendants, on oath, to be by you administered, to take and certify the depositions of the said witnesses, and return the same in accordance with the statute in such case made and provided.

Witness the Hon. Wm. P. Kellogg, judge of the district court of the first judicial district, at the city of Omaha, on the 11th day of April, A. D. 1862.

[SEAL] J. H. KELLOM, *Register.*

33 *Notice of filing interrogatories, filed April* 1, 1862.

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

SAMUEL N. PARMALEE, compl't,
vs.
ANDREW J. SIMPSON, *et al.*, def'ts.

Take notice that on the 10th day of April, A. D. 1862, application will be made to the register of said court, at 10 o'clock a. m of said day, for a commission to take the testimony of Alfred Sayre, a witness residing in the city of Denver, and Territory of Colorado, upon interrogatories this day filed in the office of said register, said testimony to be used on the part of the above-named complainant on the hearing in said cause in said court. The mayor of the said city of Denver is hereby named on the part of said complainant as commissioner to take said testimony. And you are hereby notified to name a commissioner on the part of said defendant, and file cross-interrogatories, or the said commission will issue and the said testimony be taken ex parte. The taking of said testimony may be adjourned from day to day until the same is completed.

A. J. POPPLETON, *Sol. for Compl't.*

To Messrs. REDICK & BRIGGS, *Sol's for Def'ts.*

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Andrew J. Poppleton, being duly sworn, deposes and says he served
34 the within notice on the within-named defendant, Andrew J. Simpson, by personally delivering a true copy thereof to Messrs. Redick & Briggs, his solicitors, on the thirty-first day of March, A. D. 1862, at their office, in Omaha City.

ANDREW J. POPPLETON.

Subscribed in my presence, and sworn to before me this first day of April, A. D. 1862.

J. H. KELLOM, *Reg'r.*

Deed.—Bovey to Simpson.

To all to whom these presents shall come, greeting:

Know ye that I, George C. Bovey, party of the first part, of the city of Omaha, Nebraska Territory, for the consideration of two thousand dollars received to his full satisfaction of Andrew J. Simpson, party of the second

part of, does grant, bargain, sell, and confirm unto the said parties of the second part, his heirs and assigns, all the following described property, situated in the county of Douglas, and Territory of Nebraska, to wit: The east one half of the southeast quarter of section twenty-nine, (29,) and the west half of the southwest quarter of section twenty-eight, (28,) in township fifteen north, of range thirteen east of the sixth principal meridian, in the said Territory of Nebraska. To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said party of the second part, his heirs and assigns, forever. And the said party of the first part, himself and his heirs, executors, and administrators, does covenant with the said party of the second part, his heirs and assigns, that at
35 and until the unsealing and delivering of these presents that he is well seized of the premises as of a good and indefeasible estate simple, and have good right to bargain and sell the same in manner and form aforesaid, and that the same are free from all incumbrance whatever. And the said party does hereby bind himself and his heirs to warrant and forever the above granted and bargained premises unto the said party of the second part, his heirs and assigns, against all claims and demands whatsoever.

In witness whereof, the said party of the first part hereunto set his hand the fifteenth day of April, A. D. 1858.

GEORGE C. BOVEY.

In presence o—fALFRED SAYRE.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Be it remembered, that on this fifteenth day of April, eighteen hundred and fifty-eight, before me, the undersigned, a notary public within and for said county, came the above-named George C. Bovey, known to me to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the same to be his voluntary act, deed.

Recorded April 15, 1858.

[SEAL.] ALFRED SAYRE,
N. P., Douglas County, N. T.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Peter Hugus, county clerk and ex officio register of deeds in and for said county, do hereby certify that the foregoing is a true and correct
36 copy from Book T, pages 233 and 234, of the records of Douglas County, N. T.

Witness my hand and official seal this 31st day of March, 1862.

[SEAL.] PETER HUGUS, *Co. Clerk,*
By REED, *Deputy.*

Interrogatories, filed March 31, 1862.

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

SAMUEL N. PARMALEE, complainant,
vs.
ANDREW J. SIMPSON *et al.*, defendants.

Interrogatories to be administered to Alfred Sayre, of the city of Denver and Territory of Colorado, in pursuance of a commission hereto annexed.

First. What is your age, occupation, and place of residence?

Second. Where did you reside and in what business were you engaged in the month of April, A. D. 1858? In connection with whom were you doing business? In whose office were you and what office did you hold? Whether

you had a seal of office, where the same was kept, and to whom the same was accessible. State fully.

Third. Are you acquainted with George C. Bovey, the defendant? If so, state when, where, and how long you have known him.

Fourth. Please examine the paper hereunto attached, marked "Schedule A," and state whether or not the instrument of which the same is cer-
37 tified by the register of deeds of Douglas County to be a true copy was executed or acknowledged before you or in your presence.

Fifth. State whether or not you witnessed or took the acknowledgment of any deed or deeds executed by the said George C. Bovey in the month of April, A. D. 1858, or at any other time. If so, state what ones.

Sixth. How do you spell your name? How did you spell your name on the fifteenth day of April, A. D. 1858?

Seventh. State all you know in respect to the genuineness or the false and fraudulent character of the acknowledgment of the instrument of which the paper marked "Schedule A" purports to be a copy. Likewise in respect to the genuineness or false or fraudulent character of the signature thereunto appended as acknowledging notary public and subscribing witness.

Eighth. Had you, in the month of April, A. D. 1858, a notarial seal? If so, where was it kept and whether accessible or not to the said Bovey or any other person beside yourself?

Ninth. State whether or not the said Bovey, during the month of April, A. D. 1858, executed any conveyance or instrument purporting to convey land or real estate to Andrew J. Simpson or any person, in your presence.

Tenth. State any other matter or things which you know in relation to the genuineness of the instrument marked "Schedule A," purports to be a copy, or in regard to the genuineness of the signature of the acknowledging notary public and subscribing witness.

ANDREW J. POPPLETON, *Sol. for Compl't.*

38 *Cross-interrogatories, filed April 2d,* 1862.

District court, Douglas County, N. T., in chancery.

SAMUEL N. PARMALEE, compl't,
vs.
ANDREW J. SIMPSON *et al.*

Cross-interrogatories to be propounded to Alfred Sayre at his examination.

1st. Did you not take a large number of acknowledgments of deeds and other instruments, in spring of 1858, as notary public of Douglas County, N. T., and might not Geo. C. Bovey have come before you and acknowledged the said deed to said A. J. Simpson and you now have forgotten it?

2nd. Were you not in the habit of writing the last two letters of your name in "Sayre" very indefinite, so they would read either "er" or "re"—say like this: [see manuscript;] and whether some persons did not spell your name "Sayer." Might not the mistake have been in the recorder in copying the deed upon the record, and whether you know of the recorder making any such mistake before, and whether you were not in the habit of keeping your notary seal in your desk locked up?

And thereupon afterwards, to wit, on the 31st day of October, A. D. 1862, the following motion was filed, which is in words and figures following, to wit:

District court, Douglas County, in chancery.

SAMUEL N. PARMALEE }
vs.
JAMES G. MEGEATH *et al.* }

And now comes the said complainant, by his solicitor, A. J. Poppleton, and moves the court for a rule upon the master to whom this cause was
39 referred to take testimony and report the same, requiring the said master to make his said report to this court on the morning of Monday, November 3d, A. D. 1862, and file the same in this court on or before that time. The grounds upon which this motion is based are apparent from the files and records of this cause.

A. J. POPPLETON, *Sol. for Compl't.*

And thereupon afterwards, to wit, on the 4th day of November, 1864, was filed the master's report, &c., in this cause, which appears of record in words and figures following, to wit:

SAMUEL N. PARMALEE, complainant, }
vs.
GEORGE C. BOVEY *et al.*, defendants. }

To the judge of the district court in chancery, Douglas County, Nebraska Territory:

The report of Daniel Gantt, master in chancery, to whom this cause stands referred by an order of this court made in the above-entitled cause, bearing date the 30th day of October, A. D. 1861, to compute and ascertain the amount due to said complainant on the note and mortgage mentioned in said bill and to take proofs of the facts and circumstances stated in said bill and answer of said defendant Simpson, and report the amount due and all such proofs and examinations to this court with all convenient speed.

Now, therefore, I, the undersigned, said master in chancery, do respectfully certify and report that I find that the defendants, James G. Megeath and George C. Bovey, did, on the 8th day of April, A. D. 1858, make and deliver their certain promissory note in writing to Robert B. Whitled,
40 bearing date said day last aforesaid, for the sum of four thousand and five hundred dollars, payable six months after date thereof, with interest thereon from the 7th day of April, A. D. 1858, at the rate of one per cent. per month, which note I find was on the 17th day of May, A. D. 1861, regularly assigned by said Robert B. Whitled to Samuel N. Parmalee, the complainant, and which note is hereto attached and marked "Exhibit B," and made part of this my report.

I further certify and report that I find the following payments made on said note, to wit, May 6, 1859, the sum of three hundred and fifteen dollars, being the interest on said note for seven months and until the 7th day of November, A. D. 1858; August 11th, 1859, the sum of one hundred dollars, and May 7th, 1861, the sum of eleven hundred dollars. Also that I have computed and ascertained the amount due on said note and mortgage in said bill mentioned up to and including the date of this my report, and that the amount so due for principal and interest I find to be the sum of five thousand four hundred and fifty-five dollars and fifty cents.

And I further certify and report that the following is a statement of the principal and interest money due on said note and mortgage as aforesaid, the period of the computation of the interest and its note, to wit:

Computation.

Principal sum of note is		$4, 500 00
May 6, 1859, paid on note the sum of $315, being interest thereon for 7 months, and until 7 Nov'r, 1859.		
Aug. 11, 1859, paid on note sum of	$100 00	
May 11, 1859, paid on note sum of	1, 100 00	
Making the sum of	1, 200 00	
These payments do not cover the interest on the note up to the times they were severally made; therefore interest is computed on the principal of the note from 7 Nov'r, 1859, to 4 Nov'r, 1862, at the rate of one per cent. per month, three years, eleven months, and twenty-seven days, which is the sum of		2, 155 50
Making, in principal and interest, the sum of		6, 655 50
From which deduct the above two payments of		1, 200 00
Leaves amount due complainant, Nov. 4, 1862, of		5, 455 50

And I further certify and report that I find the defendants, James G. Megeath (and Virginia C. Megeath) and George C. Bovey, did, on the 17th day of April, 1858, execute and deliver to the said Robert B. Whitled the said mortgage in the said bill mentioned, and upon the lands and premises in said bill particularly described, to secure the payment of the said note made by said James G. Megeath and George C. Bovey, as aforesaid, for $4,500, bearing date the 7th day of April, 1858, with interest thereon from said day last aforesaid at the rate of one per cent. per month, which mortgage was duly signed, witnessed, and acknowledged and recorded in the register's office of Douglas County aforesaid, in book "D," at page 67.

I further certify and report that I find the said Robert B. Whitled did, on the 17th day of May, A. D. 1861, assign all his right, title, and interest in and to the said mortgage aforesaid to Samuel N. Parmalee, the complainant in this cause, as appears from the assignment thereon and the proofs taken.

And I further certify and report that I have taken the proofs of the facts and circumstances stated in said bill of complaint and the answer of defendant Andrew J. Simpson; that all such proofs were taken before me,
42 at my office, in Omaha, and that the examination of the witnesses were attended by the solicitors of the respective parties, and that the depositions and exhibits hereunto attached and made part of this my report contain all said proofs and examinations.

All which is respectfully submitted.

DAN. GANTT, *Master in Chancery.*

District court, Douglas County, in chancery.

SAMUEL N. PARMALEE, complainant,
vs.
JAMES G. MEGEATH *et al.*, defendants.

Depositions taken in a certain cause pending in the district court of Douglas County in chancery, wherein Samuel N. Parmalee is complainant and James G. Megeath and others are defendants, in pursuance of an order of reference directed to the undersigned master in chancery made by the above-named court, bearing date the 30th day of October, A. D. 1861.

Upon due service of notice to respective solicitors of the parties in this case that the examination of witnesses would be had at my office in Omaha

City, on Tuesday, the 5th day of November, A. D. 1861, at ten o'clock a. m., and in pursuance of said notice, A. J. Poppleton, esquire, appeared as solicitor for complainant and J. I. Redick, esq., appeared as solicitor for defendants, and by consent and agreement of said solicitors of the respective parties, adjourned to meet at the same place on Saturday, the 9th day of November, A. D. 1861, at seven o'clock in the afternoon.

SATURDAY, *November 9th*, 1861.

Met according to adjournment. A. J. Poppleton, esq., appeared
43 for complainant and Redick & Briggs appeared for defendant, and by consent agreement of said solicitors of the respective parties, adjourned to meet at the same place on Saturday, November 16th, 1861, at seven o'clock p. m.

SATURDAY, *November 16th*, 1861.

At 7 o'clock p. m. met according to adjournment. A. J. Poppleton appeared as solicitor for complainant and J. I. Redick appeared as solicitor for defendant.

William F. Sapp, a witness produced, sworn, and examined on the part of complainant, says:

1st ques. What is your occupation and place of residence?

Ans. I am an attorney, and reside in Omaha City, N. T.

Ques. 2. Please examine the assignment now presented you, and state whether or not you are the subscribing witness thereto, and whether or not the signature of R. B. Whitled thereunto appended is genuine.

(Objected to by sol. of defendant A. J. Simpson, on the ground that the same is immaterial.)

Ans. I am the subscribing witness to said assignment, and I know the signature of R. B. Whitled to be genuine. I saw him write his name to said assignment.

Ques. 3. State whether or not the promissory note described in said mortgage was assigned to said complainant at the same time?

Ans. It was.

Complainant's solicitor offers in evidence the mortgage, marked "Schedule A," together with the assignment thereon endorsed and referred to by witness.

Objected to by sol. for A. J. Simpson, one of the defendants, on the ground that the same has not been properly proven to entitle to go in as evidence.

44 *Cross-examination of witness on part of defendant.*

1 ques. You state that you were at the time this assignment was made. Will you state all the conditions of that assignment, if there were any?

(Objected to by sol. of complainant, on the ground that the assignment is in writing and no parol proof is admissible to vary or alter the terms of the assignment in writing. Complainant's solicitor also objects to witness giving statements of what he only knows as counsel of the parties to the assignment.)

Ans. I know nothing of the conditions upon which the assignment was made, only what I learned from Mr. Parmalee prior to the time it was made, and all I learned from him was communicated to me as his counsel, and those I decline to give.

2 ques. Are you the attorney of either Whitled or Megeath in this transaction?

Ans. I am not, and never have been.

3 ques. State now the whole conversation, if any there was, between Whitled and Parmalee in your presence in regard to the outside conditions of this assignment.

(Objected to, on the ground stated in objections to first interrogatory.)

Ans. There was no conversation between them in relation to the assignment of the mortgage in my presence to the best of my recollection. I think all the conversation between them in my presence was about other matters.

4 ques. Did you learn from Whitled or Megeath that there were any other conditions in regard to the assignment of this mortgage other than the assignment itself about which you have testified?

45 (Objected by complainant's solicitor, on the grounds stated in objections to first [cross-interrogatory, and upon the further ground that Megeath and Whitled's admissions are not evidence against the complainant.)

Ans. I did not. I think I never had any conversation with Mr. Whitled excepting on that occasion to give him some directions where to sign his name, and I had no conversation with Mr. Megeath on that day or any other in which he informed me of any conditions in respect to the assignment, as far as I remember.

5 ques. Do you, or any one that you know of, hold any writing between Mr. Whitled and Mr. Parmalee in relation to the sale or assignment of this mortgage?

(Objected to by complainant's solicitor, on the grounds that it is immaterial and irrelevant.)

Ans. I don't think I know of any one that holds any such writing, and I know I don't hold any such.

6 ques. State if there was any consideration passed from Parmalee to Whitled at the time you wrote and witnessed the assignment referred to by you.

(Objected to by complainant's sol., on the ground that it is not proper cross-examination.)

Ans. My recollection is indistinct about that. I have an indistinct recollection of Mr. Parmalee unlocking his safe and taking currency out of the same, but whether it was for Whitled or some person else that was in his banking office I cannot say. My attention was not directed to that.

Examination renewed by complainant.

1 ques. State whether or not you had any connection with said assignment other than to draft and witness the instrument as the attorney of Parmalee.

46 Ans. I went there at the request of Mr. Parmalee, as his attorney, to draw the assignment on the note or notes, and I had no connection with the matter excepting in the capacity of an attorney for Mr. Parmalee.

Recross-examination.

1 ques. Are you one of the attorneys of Mr. Parmalee at this time in this matter?

(Objected to by complainant as immaterial and irrelevant.)

Ans. I am not.

2 ques. You stated in your cross-examination before that all you knew of the outside conditions of this assignment you learned from Mr. Parmalee before the assignment was made, and you refused to disclose them, claiming your privilege as an attorney. Will you now state at what time he first consulted you as an attorney in the matter?

(Objected by complainant's sol., on the ground as immaterial and irrelevant and for the reasons specified in objections to first cross-interrogatory.)

Ans. I did not state that I learned any outside conditions connected with the assignment from Mr. Parmalee; at least, I did not desire to be so understood. I think Mr. Parmalee talked with me about the matter two or three times—I can't be distinct about the number—and but a very short time before the time the assignment was made. I think all the conversations he had with me were within four days of the date of the assignment, and probably less time. At each conversation he talked with me in the capacity of attorney; at least, I so understood it.

3 ques. Then, I understand you to say that you was employed as his attorney, or you so considered yourself in this matter about four days before
47 the assignment. Do I so understand you?

(Objected to by complainant's sol., on the ground that it is immaterial and irrelevant.)

Ans. From my best recollection it was not to exceed four days before the date of the assignment, and may have been a shorter time that I had the conversations with Mr. Parmalee before alluded to. Mr. Parmalee in the first conversation stated to me that he desired I should attend to the matter for him, and entered into some conversation in relation to it. From the time he told me he desired me to attend to the same until it was all completed I considered I was acting as his attorney in respect thereto. When I say matter I mean the assignment of the note and mortgage.

4 ques. Was that all the matter he spoke to you about in connection with the purchase of this mortgage from Whitled?

(Objected to by complainant's sol., on the ground of immateriality and irrelevancy.)

Ans. All the conversation between us had a reference to the assignment of the mortgage and note.

5 ques. Did he not on that occasion request you to examine the records; and did he not tell you on that occasion that there was some trouble about a portion of the land included in the mortgage, and consult you in reference to that matter aside from the assignment of the mortgage? State all that he said to you at that time or any other time in regard to the mortgage in question and the assignment thereof, or with reference to the prospective trouble concerning that mortgage.

(Objected to by complainant's sol., on the grounds stated in objec-
48 tions to first cross-interrogatory and as not being proper cross-examination.)

Ans. He did not request me to examine the records, and I did not examine them. All the conversations I ever had with Mr. Parmalee in respect to the mortgage or its assignment, to the best of my recollection, are those that I have alluded to, and all those conversations I consider confidential, and I refuse to give any part or parcel thereof.

6 ques. You state that you were only employed for him to make the assignment on that mortgage. Did he say anything to you about anybody else claiming an interest in the land included in the mortgage, or that he might have trouble about the matter?

(Objected to by complainant's sol., on the ground that it is not a proper cross-examination and is irrelevant.)

Ans. I think I never had any conversation with Mr. Parmalee about this matter but what had some connection with the note and mortgage, and all the conversations being of the confidential character I have before spoken of, I refuse to state anything at all that was said by him to me.

Ques. 7. What did he tell you, if anything, about there being trouble about a portion of the land included in that mortgage?

(Objected to by complainant's sol. for same reasons as stated to next preceding question.)

Ans. As I have before stated, all the conversations I ever had with Mr. Parmalee was of a confidential character of client and attorney, and I refuse to give any part or parcel of the same.

Ques. 8. Was not this the conversation you before spoke of as being about four days before the assignment was made?

49 (Objected to by complainant's sol., on the same grounds as objections made to question number 6)

Ans. I refuse to make any answer to that question for the reasons before stated.

Same witness recalled in chief.

Ques. 9. (Defendant's sol. objects to this witness giving testimony at this time in chief, on the ground that he was called and examined in chief and discharged, and cannot be called again except by consent of counsel or upon notice, and defendant's sol. only appears to make this objection.)

Ques. 10. Examine the assignment now presented you and state whether you are the subscribing witness thereto, and whether or not the signature of R. B. Whitled thereunto appended is genuine, and also whether the note on which said assignment is endorsed is the identical one described in the mortgage heretofore introduced in evidence as Schedule A.

Ans. I am the subscribing witness to the assignment, and the signature of Whitled is genuine. I saw him write his name under the assignment, and I believe the note to be the identical note described in the mortgage referred to.

Complainant's sol. now offers the note in evidence, and hereto attached and marked Schedule B.

W. F. SAPP.

Subscribed in my presence and sworn to before me this 16th day of November, A. D. 1861.

DAN. GANTT, *Master in Chancery.*

Complainant admits the endorsements appearing upon the back of the note designated Schedule B.

50 Upon due service of notice parties met at the office of Daniel Gantt, master in chancery, on the 3d day of March, 1862, and by consent of solicitors of parties adjourned to meet at the same place on the 7th day of March, 1862, at 2 o'clock p. m., for examination of witnesses.

March 7, 1862, at 2 o'clock p. m., parties met agreeably to adjournment, at the office of Daniel Gantt, master in chancery.

A. J. Poppleton appears as solicitor for complainant; J. I. Redick appears as solicitor for defendant A. J. Simpson.

Andrew J. Simpson, a witness produced, sworn, and examined on part of defendants, says:

1. State your age, occupation, and place of residence.

Ans. Age, twenty-seven years; occupation, carriage painter; and my residence is Omaha, Nebraska Territory.

2. Where did you reside previous to your residence in Nebraska?

Ans. In Sacramento City, California.

3. In what month did you leave California for Nebraska?

Ans. I left California for Nebraska on the 5th day of March, 1858.

4. On what day of the month and year did you arrive in Nebraska? State your means of knowledge.

(Objected to by solicitor for complainant, on ground that the question is irrelevant.)

Ans. I arrived in Nebraska on the 18th day of April, 1858. I kept a memorandum of my travels from the day I left California until I arrived in Omaha.

5. Was you ever in Nebraska before the 18th day of April, 1858?

51 (This interrogatory, together with all preceding ones, put to this witness, except the first one, objected to by solicitor of complainant, on the ground that they are irrelevant.)

Ans. I never was.

6. State whether you ever sold to George C. Bovey, late of this Territory, any land in sections twenty-eight or twenty-nine, in township fifteen north, of range thirteen east, Douglas County, Nebraska, by deed or otherwise, and whether you are acquainted with said George C. Bovey.

(Objected to by complainant's solicitor on the ground that the question is leading, incompetent, and irrelevant.)

Ans. I never did. I am acquainted with G. C. Bovey.

7. In the previous question I asked you to state whether you sold said Bovey land in sections twenty-eight or twenty-nine. I will now ask you if you sold said Bovey any land in Nebraska in the month of April, 1858, or at any other time, by deed, contract, or otherwise; and if so describe the land.

(Objected to by complainant's solicitor as irrelevant.)

Ans. I never did sell him any land by deed or contract or in any other way.

(Here witness Simpson is shown a signature, purporting to be his, signed to a deed dated 17th day of April, 1858, purporting to convey to George C. Bovey the east one half of the southeast quarter of section 29, and the west half of the southwest quarter of section 28, in township fifteen north, of range thirteen east, Douglas County, Nebraska, and is asked by solicitor for defendant Simpson to state whether that is his signature or his

52 deed.

(Objected to by complainant's solicitor, on the ground that the question is irrelevant and not a proper method of examination and is incompetent.)

Ans. It is not my signature and it is not by deed.

9. Can you assign any reasons why it is not your signature and your deed?

Ans. I was not in the Territory at the time that deed purports to be executed.

10. Did you ever authorize any one to execute it for you?

A. I did not.

11. Did you ever appear, and if so, when, before any notary public of Douglas County, Nebraska, in the month of April, 1858, to acknowledge the execution of any deed? And if so, before whom did you appear, and when?

(Objected to by complainant's solicitor, on grounds that it is irrelevant.)

Ans. I never did. I was before two or three notaries to acknowledge leases on property.

(Here defendant witnesses in evidence the purported deed from Simpson to Bovey, which defendant Simpson claims in his answer to be a forgery; which paper is marked Schedule C.)

(The introduction of this deed as evidence objected to by complainant's solicitor on the ground of incompetency.)

12. Will you now state whether or not the deed purporting to be from you to Bovey for said land is a forgery of your name, dated April 17th 1858?

53 (Objected to by complainant's solicitor, on the ground that it calls for witness's opinion upon a question of law, and is therefore incompetent.)

Ans. It is a forgery of my name.

13. When did you first learn that a forgery of that kind had been made and was standing upon the records of this county?

(Objected by complainant's solicitor on grounds of irrelevancy.)

Ans. It was in the spring of 1860.

14. When did you first learn it yourself?

(Objected to on ground of irrelevancy, by complainant's solicitor.)

Ans. I first learned it myself in the summer of 1860. I got word of it in the spring of 1860, and was informed of it in the summer of 1860.

15. State who was the owner of the land described in said forged deed at the date of said forged deed.

(Objected to by compl't's solicitor, on the ground that it asks for witness's opinion on a question of law, and is therefore incompetent.)

A. I was the owner of it, I believe. I will state that I was the owner of the land at that time. The word "I believe" I stated by mistake, and without thinking, and ask to have it stricken out.

16. Have you ever parted with the title to said lands to any one? and if so, to whom?

(Objected to on the ground that the question is irrelevant and incompetent, by compl't's solicitor.)

Ans. I never have parted with it to any one.

17. State, if you know, what has become of the deed of George C. Bovey to you conveying said land described in said forged deed, and whether you obtained title to said lands through said Bovey.

54 (The last clause of the question objected to by compl't, on grounds that it is irrelevant.)

Ans. I did obtain title to said lands through George C. Bovey. I am unable to say what has become of the deed.

18. When did you last have it and see it, and what search you have made to find it? and state whether it is lost.

Ans. The last time I saw the deed was some time in the month of May, 1858. I have searched for that together with other deed and contract, and am unable to find it. To the best of my knowledge I believe it is lost.

(Defendant Simpson here offers in evidence a certified copy, from the records of Douglas County, of the deed purporting to convey the lands in dispute by George C. Bovey to A. J. Simpson, dated April 15th, 1858; which copy is hereto attached and marked Schedule D.)

(The introduction of this deed as evidence objected to by complainant, on the ground that no proper foundation has been laid for its introduction, and the same is not properly authenticated and proven.)

Ques. 19. State whether you ever had any conversation with said Bovey after hearing of this forgery, and when and what did he say to you in regard to it?

(Objected to by compl't, on the ground that it is incompetent for the reason that Bovey's admissions not under oath can in no case be testimony either for this defendant or against the complainant Parmalee.)

55 Ans. I had a conversation with said Bovey in the fall of 1860. I asked him in relation to it, and he said that I was safe enough.

Cross-examination of witness by solicitor for compl't.

1. You state in your direct examination that you arrived in Nebraska on the 18th day of April, 1858. State when and where upon your arrival you first saw Bovey.

(Objected to by def't's sol., on the ground that the same is irrelevant.)

Ans. I saw him on my arrival in the Hamilton House, in Omaha, some time in the afternoon.

2. Where had you last seen him prior to that time?

(Objected to by def't's sol., on the ground of irrelevancy.)

Ans. The last time was in the spring of 1852, in Cincinnati.

3. When did you first see the alleged forged deed marked C?

Ans. It was some time after I had commenced proceedings against Bovey and others.

4. What time do you mean when you say some time after proceedings were commenced vs. Bovey by you?

Ans. I don't think it was a month after the suit was commenced.

5. Fix the day of the month and the year as near as you can.

Ans. I cannot recollect what time the papers were got out. It was some time in the summer of 1860, as near as I can recollect.

6. Where and in whose possession did you first see it?

Ans. I saw it in the shop, in possession of William Ryan.

7. Do you know who signed your name to that instrument?

Ans. I do not.

8. Do you know the handwriting in the body of the deed?

(Objected to, on the ground that it is not proper cross-examination.)

56 Ans. I do not.

9. You state in your direct examination that you were, as you believe, the owner of the land described in the paper marked "C." Had you any other title to that land than that derived from Bovey by virtue of the alleged conveyance from Bovey to Simpson, dated April 15, 1858, and a pretended copy of which has been offered in evidence, marked "D?"

(That portion referring to what witness said is objected to by def't, on the ground that it seeks to mislead the witness, he having distinctly said that the word believe was used by mistake, and without thinking.)

Ans. I had no other title than his taking me out to the land and showing it to me, and stating he had deeded it to me for a consideration of the money he had received from me.

10. Upon what day did he take you out and show you the land as you have mentioned?

Ans. It was on the day after I arrived, on Monday, the 19th April, 1858

11. Had you then seen the deed referred to?

Ans. I had not.

12. When did you first see it, and when did it first come into your possession?

Ans. It was on the evening of the 19th April, 1858, that I first saw it, and that he stated was the deed.

13. From whom did you receive it at that time?

Ans. From George C. Bovey.

14. Had you at the time of your arrival here, on the 18th April, 1858, any knowledge that such a deed had been executed by Bovey?

Ans. Only from a letter received from him from Chillicothe, Ohio,

57 that he intended deeding some property to me that he had pre-empted.

15. Had you any knowledge at the time of your arrival in Nebraska, on 18th April, 1858, that such a deed, or any deed whatever, had already in fact been executed?

Ans. I had no other knowledge than from Bovey's saying he would deed it on his arrival in Omaha in the spring of 1858.

16. What was the date of the letter in which Bovey made this statement?

Ans. It was about the forepart of December, 1857.

17. At what date was that letter received by you?

Ans. It was the latter part of January, 1858.

18. Had you any other knowledge that a conveyance had been made by Bovey to you of this property on the 18th of April, 1858, except what you derived from that letter?

Ans. I believe not.

19. How long did this pretended deed from Bovey to yourself remain in your possession?

Ans. I don't think to exceed a month.

20. Where was it kept during that time?

Ans. In a trunk containing other papers. It was in the "Hamilton House."

21. In whose trunk?

Ans. In my own.

22. When did you first know that that deed was missing or lost?

Ans. After the building of my carriage shop, some time in June, 1858.

23. State in detail what search you made for it at that time and afterwards?

Ans. I made no search for it at that time. In looking over my papers I was asked by Bovey for the contract that he had let me have in rela-
58 tion to building the shop. He had access to these papers, and that is the last I have seen of it. I made search for it some time afterwards, in the spring of 1860, and could not find it. I wrote to Bovey in relation to it in the winter of 1860, and received no answer. I also went down to recorder's about that time and could find nothing of it there. I have searched all my papers and am unable to find it.

24. Did you ever find the other papers which disappeard at the same time this deed was lost?

Ans. I never did.

25. Had Bovey any interest in those papers?

(Objected to by the def't, on grounds of irrelevancy and is not a proper cross-examination.)

Ans. He had in the contract paper and scrip lots.

26. State whether or not you are the same A. J. Simpson who is defendant in this suit, and likewise complainant in a suit pending in this court to set aside the alleged conveyance marked "C."

Ans. I am the same.

Re-examined by defendants' sol.

1. At the time Bovey delivered to you the deed conveying this land had it been recorded?

(Objected to by compl't, on the ground that the witness is not competent to prove the record of the deed.)

Ans. It had.

2. You stated in cross-examination that you had no other knowledge of the conveyance of this land by Bovey to you except by a letter written by him to you, dated at Chillicothe, Ohio, stating that he would deed to you the land upon his arrival at Omaha in the spring of 1858. Will you state whether he had received the consideration for said conveyance at the
59 time that letter was written?

(Objected to by compl't, on ground that it is not a proper re-examination.)

Ans. He had.

A. J. SIMPSON.

Subscribed in my presence, and sworn to before me, this 7 March, 1862.

DAN. GANTT, *Master.*

Adjourned by consent of parties to meet at the office of the master, on the 8th day of March, 1862, at 9½ o'clock a. m.

March 8th, 1862, at 9½ o'clock a. m., met agreeably to adjournment. A. J. Poppleton appears for complainant. J. I. Redick appears for def't A. J. Simpson.

It is agreed by and between the solicitors of the respective parties that examination of Charles E. Parcels may be had at this time exclusively upon

the fact of the time of the arrival of defendant A. J. Simpson, at Omaha, Nebraska.

Charles E. Parcels, a witness produced, sworn, and examined on the part of the defendant, says:

1. State your age, occupation, and place of residence.

Ans. My age is twenty-four years; clerk is my occupation, and place of residence is Omaha, N. T.

2. Are you acquainted with Andrew J. Simpson, and did you know him in the spring of 1858? If so, state when you first met him in that spring, and where.

(Objected to by compl't, on the ground that the question is contrary to the consent of complainant's counsel.)

Ans. I am. I did know him in the spring of 1858. I first met him at Leavenworth City, on board the steamer Emigrant about the 14th April, 1858.

3. Did you travel with him from that point? And if so, in what
60 condition?

(Objected to by the compl't, on the ground that the question is contrary the agreement.)

Ans. I did travel with him from that point to Omaha City, by the river.

4. On what day of the month and in what year did you and he land at Omaha after leaving Leavenworth City?

Ans. Landed in Omaha on the 18th day of April, 1858, on Sunday, about 4 o'clock p. m.

CHAS. E. PARCEL.

Subscribed in my presence and sworn to before me this 8th day of March, A. D. 1862.

The further examination of witnesses in this cause adjourned to Monday, March 10th, 1862, at 9 o'clock a. m., by consent of solicitors of the respective parties.

March 10th, 1862, parties met pursuant to adjournment.

A. J. Poppleton, esq., appears as counsel for complainant. J. I. Redick appears as counsel fer def't A. J. Simpson.

Byron Reed, a witness produced, sworn, and examined on part of defendant A. J. Simpson, says:

1. State your age, occupation, and place of residence.

My age is 32 years; occupation, land agent, and place of residence, Omaha, N. T., and I am investigator of land titles.

Ques. 2. State whether you are acquainted with the defendant Andrew J. Simpson and his handwriting and signature.

Ans. I am acquainted with A. J. Simpson, and tolerably well acquainted with his handwriting.

Ques. 3. Would you know his signature and handwriting if you would see it?

Ans. I think I would.

Ques. 4. Will you look at the purported deed marked "C" in this
61 case, and state whether the purported name of Andrew J. Simpson thereto written is the handwriting and signature of Andrew J. Simpson, this defendant?

Ans. I don't think it is his signature or his handwriting.

Ques. 5. State whether you ever had any conversation with the complainant Sam'l N. Parmalee, relative to this purchase of the mortgage herein set forth, or in regard to the title or claim of Andrew J. Simpson to a portion of the land described in that mortgage. And if so, what was said, and when the conversation took place?

(Objected to by compl't as incompetent and irrelevant.)

Ans. I had some conversation with Mr. Parmalee in regard to the title of the land mentioned in that mortgage. He wanted to know about the title. I told him that the title was bad to a part of the land, and another portion of the land was involved in a suit of Simpson against Bovey and others. The conversation took, to the best of my recollection, in the first part of May, 1861.

Ques. 6. What did you tell him on that occasion about Simpson claiming the land pre empted by Bovey, and turning to your books and describing it to him ?

(Objected to by compl't as incompetent and irrelevant.)

Ans. I told him that Simpson claimed that land, and had commenced a suit in regard to it, and it was the land Bovey pre-empted. There was but little conversation about it.

Cross-examination by sol. for complainant.

Ques. How often have you seen Simpson write ?

Ans. I think I have seen his signature twenty times or thereabouts, and have seen him often write it. I have no doubt I have it on twenty orders in my possession, or that have recently been in my possession.

62 Ques. 2. Will you fix the precise date of this conversation with Sam'l N. Parmalee ?

Ans. I can't fix it nearer than it was in the first part of May, 1861, or thereabouts. I know it was at or about the time Whitled was here.

Ques. 3. Will you swear positively it was before the 20th of May, 1861 ?

Ans. I would not so state unqualifiedly, though I think it was.

Re-examined by def't Simpson's sol.

1. Did you not learn the time this suit had been dismissed in the district court pending, brought by Simpson against Bovey and others, and state what time this conversation took place in reference to the time of dismissing of that suit, whether before or after ?

(Objected by compl't as incompetent and leading.)

Ans. I do not recollect when I first learned that the suit had been dismissed, and do not know whether it was before or after this conversation.

Ques. 2. State what Parmalee told you, if anything, on that occasion about his intending to purchase the mortgage hereinbefore referred to, assigning that as a reason for making the inquiry.

(Objected to by compl't as incompetent and irrelevant.)

Ans. He told me that I need not give him an abstract of title at that time; that if he concluded to have an abstract he would first see Megeath and have him pay for it. My recollection is that he said he would require an abstract in case he made the purchase of the mortgage.

Cross-examined by sol. for complainant.

Ques. 1. Has he since required and received an abstract ?

Ans. He has not.

BYRON REED.

63 Here defendant Simpson offers in evidence the patent from the government of the United States for the land herein claimed by said Simpson as pre-empted by said George C. Bovey, and in this cause marked Schedule "E," and which is attached as Schedule X in suit of A. J. Simpson *vs.* J. G. Megeath and others, No. 196.

(Objected by compl't as irrelevant and not properly proven.)

April 5, 1862, met on notice given by complainant, and by consent of parties adjourned to April 12, A. D. 1862, at 9 o'clock a. m.

April 12, 1862, met pursuant to adjournment.

A. J. Poppleton appears for complainant. J. I. Redick appears for def't A. J. Simpson.

Byron Reed, a witness produced, sworn and examined on part of complainant, says:

Ques. 1. Are you the same Byron Reed who testified on behalf of the defendant A. J. Simpson in this case?

Ans. I am.

Ques. 2. Have you ever seen the original instrument of which the paper marked Schedule "D" purports to be a copy? If so, state when and where.

Ans. I never saw it.

Ques. 3. Please examine the paper marked "D," and state when and by whom the entry made at the foot of the acknowledgment thereof (recorded April 15, 1858) was made in the original book of records.

(Objected by deft. Simpson, on the ground that the witness is not the proper person by whom to prove that entry or to change any date in a record; that the record itself is the best evidence, and therefore his testimony is incompetent.)

Ans. That entry was made by me as a deputy register of deeds some time in the year 1860, when I discovered that it had been omitted by the
64 register of deeds or his deputy. I took the date from the index of deeds.

Ques. 4. Have you any personal knowledge of the correctness of that entry farther than you derive it from the index as stated?

Ans. I think the fact of it being recorded in its order with other instruments is evidence of its correctness. I have no other knowledge in regard to it.

Ques. 5. When was your attention first called to this instrument on the original record?

Ans. In the early part of the year 1860, at the time this entry was made.

BYRON REED.

Albert L. King, a witness produced, sworn and examined on part of complainant, says:

1. What is your age, occupation, and place of residence?

Ans. My age is 29 years; occupation deputy sheriff, and place of residence, Omaha City, Nebraska.

2. Where did you reside and what was your occupation in the month of April, 1858?

Ans. I resided in Omaha City, and my occupation was attorney-at-law.

3. Please examine the paper marked Schedule "D," and state what you know in relation to the record of an instrument of which this purports to be a copy, or the want of record thereof, in the office of register for deeds of Douglas County, N. T., on the 17th day of April, 1858, namely, the date of mortgage executed by George C. Bovey and James G. Megeath to R. Whitled, and filed as evidence in this case, and marked Schedule "A," and drawn and acknowledged and witnessed by yourself. State fully all you know in relation to it.

65 (Objected to by the def't Simpson, on the ground, 1st, that the witness cannot impeach the record by any testimony he may give; 2d, it does not appear that he is or was the register of deeds at the time, who would be most likely to know; 3d, there is no proof as yet that he obtained at that time a certified abstract of the title from the register of deeds, and therefore his testimony is incompetent.)

Ans. On the 17th day of April, 1858, Mr. Whitled, and I think James Megeath was with him, called on me to execute a mortgage by James Me-

geath and George C. Bovey to Robert B. Whitled, to secure a note held by Whitled against Megeath and Bovey. I was also requested before drawing up the same to examine the records and see if the title in the land about to be mortgaged was vested in Megeath and Bovey without any incumbrance. I went to the recorder's office and made an examination of the recorder's books, and found no deed on record conveying the land mortgaged away from Megeath and Bovey, and then immediately went to my office, drew up the mortgage before me here, and then Megeath and Bovey and James G. Megeath's wife signed the mortgage, and the acknowledgment was taken by me.

4. What books did you look at on the said 17 day of April, 1858, to ascertain whether there was any conveyance from Bovey of this land to any other person?

Objected to by def't Simpson, 1st, it seeks to contradict the record; 2d, it does not appear that witness is the register of deeds, who would most likely know, nor does it appear that he obtained a certified abstract of title to said premises, and for these reasons his testimony is incompetent.)

Ans. I examined all the index of deeds and mortgages.

66 5. State how particularly your attention was called to this subject, and what reasons you had for care and accuracy in this examination.

(Objected to by def't Simpson, that the question is wholly irrelevant and immaterial.)

Ans. Because I had previous transaction with Mr. Bovey and found him to be tricky and unreliable.

6. Was or was not the instrument of which Schedule D purports to be a copy recorded in the office of the register of deeds for Douglas County on the 17th day of April, 1858?

(Objected to by def't Simpson, 1st, on the ground that it is leading; 2nd, it seeks to impeach the record. It does not appear that he is the register of deeds, who would be most likely to know, nor that he obtained an abstract of title at the time of the examination, and therefore the latter part of the question is incompetent.)

Ans. After a careful examination I found no such deed on record on the 17th day of April, 1858.

Cross-examination of witness by def't Simpson.

1. What of the day did you visit the register of deeds to make the examination of which you have spoken?

Ans. I think it was in the forenoon of the day. It is my best impression now it was in the morning.

2. About what time did you get back from the office after making the examination?

(Objected to by compl't as not proper cross-examination.)

Ans. I think I was at the office early in the morning, and don't know how long it took me, it is so long ago, but wouldn't take me very long to examine them, because I was accustomed to examine the records.

3. Where did Bovey, Megeath and his lady live at that time?

(Objected to by compl't as not proper cross-examination and im-

67 material.)

Ans. I think Megeath lived in Shinn's house. I don't remember where Bovey lived.

4. Do you not remember of taking this mortgage, after drawing it up, to Megeath's store on the night of the 17th of April, 1858, and Whitled and Johnson, and others were there?

(Objected to by compl't as not proper cross-examination, the complainant in examination in chief having made no inquiry in respect to the said mortgage.)

Ans. I don't remember.

5. Did not Megeath sign this mortgage in his store on the night of the 17th April, 1858?

(Objected to by compl't as not proper cross-examination, the compl't in examination in chief having made no inquiry in respect to the said mortgage.)

Ans. I think not. I think he signed it at his house the time his wife signed it.

6. Did not Bovey sign it in Megeath's store on the night of the 17th of April, 1858?

(Objected to by compl't for same reason as to question 5.)

Ans. I don't think he did. I don't know whether he signed it there or in my office. I don't think it was in the night.

7. How long was it after you made this examination did they sign it?

(Objected to by compl't for same reason as to question 5.)

Ans. It was immediately after making the examination. I drew up the mortgage and they signed it on the same day.

8. At the time you examined these records did you find the title to this land in dispute straight in Bovey and Megeath?

(Objected to by compl't as not being proper cross-examination, and because it is nowhere claimed by the compl't that the record of Douglas County contained any evidence of title in Bovey, and nothing but a bond for a deed from Bovey to Megeath, Bovey being the pre-emptor of this land, and his title not necessarily appearing of record in the county register's office.)

(Question waived by def't Simpson.)

68 9. State how many indexes there were in the office at that time.

Ans. I don't remember, I am sure. Can't tell to-day.

10. Were there twelve indexes?

Ans. I don't think there were that number.

11. Were there ten?

Ans. I don't think there were. I think there were three or four, and perhaps five.

12. Do you pretend to swear positively that this deed was not on record when you looked, or might you not be mistaken, like all other men?

Ans. After a careful examination of the records I found no such deed. I don't think I was mistaken, for I was accustomed to examine the records, and this time I feared Bovey's trickery.

ALBERT L. KING.

Harrrison Johnson, a witness produced, sworn, and examined on part of compl't, says:

1. What is your age, occupation, and place of residence?

Ans. My age, 40 years Nov'r next; occupation, farmer; and place of residence, Omaha City, Nebraska.

2. Where did you reside in the month of April, 1858?

Ans. Where I do now.

3. Please examine the paper marked Schedule D and state what you know in relation to the record of an instrument of which this purports to be a copy, or the want of record thereof in the office of register of deeds of Douglas County, N. T., on the 17th day of April, 1858.

(Objected by def't Simpson, on the ground that it seeks to contradict a public record; 2nd, it does not appear that he is or was the register of deeds of Douglas County, nor that he obtained a certified abstract of

69 title from the register of Douglas County, and for these reasons the testimony is incompetent and not the best evidence, and does not touch the question in issue in this case.)

Ans. On the 16th April, 1858, me and Mr. Whitled went down to the register's office to see if Bovey had mortgaged the land in dispute. (Here def't Simpson objects to the witness stating anything in regard to what Whitled did, or saw, or said, on the ground that it is not the best evidence.) Witness proceeds: We found nothing on record. On the morning of the 17 we went down to the register's office again, to see if any mortgage or deed had been put on record the day before. We couldn't find any deed or mortgage on the 17th.

4. Why did you make two examinations?

(Objected to by def't Simpson, on the ground that the question is wholly irrelevant and immaterial.)

Ans. The reason we made them was because Bovey was pretty well known for turning short corners. I thought if he could fix the matter by getting a deed or mortgage in ahead of Whitled he would do so.

5. Was or was not the instrument of which Schedule D purports to be a copy on record in the office of the register of deeds for Douglas County on the 17 day of April, 1858?

(Objected to by def't Simpson, 1st, because it is leading; 2, for the same reasons stated in the objection to question No. 3.)

Ans. It was not. We were very particular in looking the thing up.

Cross-examination by def't Simpson.

70 1. Is there any possibility of your having been mistaken?

Ans. I think not.

2. Do you pretend to say that you could not be mistaken in that examination?

Ans. I do.

3. Are not all men liable to be mistaken occasionally?

(Objected to by compl't as being too scriptural to be legal.)

Ans. They are.

4. Was you ever mistaken before on the examination of a record, and have you not frequently examined records for similar purposes?

(Objected to by compl't as irrelevant and frivolous.)

Ans. Not where I have taken as much pains as I did at that time. I have frequently examined records.

5. Was you the attorney for either party, and did you receive any compensation for your service?

(Objected to by compl't as irrelevant.)

Ans. I was not the attorney of either party, and did not receive any compensation. Mr. Whitled was a particular friend of mine and asked me to go with him.

6. Who is the real owner of this mortgage in controversy at this time?

(Objected to by compl't as incompetent, irrelevant, and not proper cross-examination.)

Ans. I don't know who is the real owner now. It was fixed up about a year ago.

7. Has James G. Megeath any interest in this mortgage other than as defendant?

(Objected to by compl't as being incompetent, irrelevant, and not proper subject of cross-examination.

Ans. That I don't know.

8. With whom was the negotiation made by Whitled when this
71 arrangement was fixed up, and who paid the money to Whitled that he got, and how much did he receive?

(Objected to by compl't as irrelevant, incompetent, and not a proper cross-examination.)

Ans. Whitled talked with James G. Megeath. It was with James Megeath. It was Megeath that paid it to him. He received between fourteen and fifteen hundred dollars that was paid to him down there. I think that it was about fifteen hundred dollars, and some little was taken off at the store in some little deal. He had some spending money, which he didn't get of Megeath.

HARRISON JOHNSON.

The further examination of witnesses adjourned to meet at the office of the master, in Omaha, on Wednesday, the 16th day of April, A. D. 1862, at 9 o'clock a. m.

DAN. GANTT, *Master in Chancery.*

April 16, 1862, no one of the parties or their solicitors appear.

April 19, 1862, at 10 o'clock a. m., met at the office of the master in Omaha, on notice given by defendant A. J. Simpson.

A. J. Poppleton appears for complainant. J. I. Redick appears for defendant Simpson.

Samuel N. Parmalee, a witness produced, sworn, and examined on part of defendant Simpson, says:

1. What is your age, occupation, and place of residence?

Ans. My age, about forty-five years; place of residence, Omaha, Neb. Territory; and occupation, wool-grower.

2. Are you the complainant in this suit?

Ans. I am.

3. Did you know Robert B. Whitled, the assigner of the mortgage
72 in question?

Ans. I did.

4. How long did you know him?

Ans. I should think about three weeks.

Ques. 5. When did you first meet him and where?

Ans. I met him at the office of Smith & Parmalee, in Omaha, about the 1st of June; on reflection, about three weeks before the assignment of this mortgage I first saw him.

Ques. 6. When did you next see him to talk to him?

Ans. I saw him nearly every day or every day at the office to talk to him for a week from the time I first saw him.

Ques. 7. When did you next see him after the end of that week to talk to him?

Ans. I should think ten days elapsed before I saw him again.

Ques. 8. Where was he that time that you saw him and talked to him?

Ans. I think he called at the office. I saw him on the street frequently.

Ques. 9. The times that he called at your office was any one with him?

(Objected to by compl't as immaterial and irrelevant.)

Ans. There was Harrison Johnson came in with him once, James G. Megeath came with him once.

Ques. 10. Which time was Megeath and Johnson with him?

(Objected to by compl't as immaterial and irrelevant.)

Ans. Megeath and Johnson were with him the last time he called, the time of the assignment.

Ques. 11. How much was paid for this mortgage and note to R. B. Whitled?

(Objected to by compl't as irrelevant to the issue.)

Ans. I paid Mr. Whitled about seven hundred dollars.

73 Ques. 12. Who paid the balance that Mr. Whitled received for that note and mortgage?

(Objected to by compl't as irrelevant.)

Ans. I only know by indorsements on the note; the last one was paid by Megeath and so endorsed on the note.

Ques. 13. Was the seven hundred dollars which you say you paid and the eleven hundred dollars which you stated Megeath paid on 17 May, 1861, all the consideration that Whitled received for the assignment of that note and mortgage?

(Objected to by compl't as leading question.)

Ans. It was, so far as I know.

Ques. 14. What interest, if any, has James G. Megeath in this mortgage at this time?

Ans. I don't know that he has any, unless it is to make the land he and Bovey has mortgaged jointly to pay the obligation.

Ques. 15. Do you hold any other security for the seven hundred dollars which you say you paid on this mortgage for its repayment than the assignment of this mortgage and note? and if so, what is it?

Ans. I have no other security.

Ques. 16. Did you employ and do you expect to pay Mr. Poppleton for prosecuting this suit?

(Objected to by compl't as immaterial and irrelevant.)

Ans. I did employ him.

Ques. 17. State with whom did you make the negotiation for the purchase of this note and mortgage, and how did you pay him?

(Objected to by compl't as immaterial and irrelevant.)

Ans. I made the negotiation with Mr. Whitled, and paid him five hundred dollars in gold, and turned him out a buggy I had at two hundred
74 dollars.

Ques. 18. Who received the eleven hundred dollars paid by Megeath, you or Whitled?

Ans. Mr. Whitled, I suppose. I did not.

Ques. 19. Was not the mortgage and note assigned to you before that payment was made?

Ans. It was not, neither of them.

Ques. 20. Were you present when Whitled signed his name to the assignment?

Ans. I was.

Ques. 21. Did you see him write his name, and did you pay him the money at that time and take possession of the papers?

Ans. I did see him write his name. I did pay him the money and took possession of the papers at that time.

Ques. 22. At the time you took possession of the papers did you figure up the amount due on that mortgage?

Ans. I did not.

Ques. 23. When did you, if ever?

Ans. About the second or third, when Mr. Whitled called to sell me the mortgage.

Ques. 24. How much did you think was due on the mortgage at the time you paid the seven hundred dollars?

Ans. About five thousand dollars, as near as I remember.

Ques. 25. Did you see at that time the endorsement of the eleven hundred dollars on the note?

At the last interview, when the papers were transferred to me, Mr. Whitled said Megeath had made a payment on the note, and proposed if I would give him the seven hundred dolls. he would give me the note and mortgage.

Ques. 26. Did you see the endorsement on the note at the time the transfer of the papers?

(Counsel for compl't objected to witness answering the question
75 without an examination of the endorsement itself, and insists that witness has the right to make such examination.)

(Question waived.)

Ques. 27. At the time Whitled signed his name to the assignment was or was not Megeath present in the office?

(Objected to by compl't as irrelevant and immaterial.)

Ans. He was.

Ques. 28. Was the eleven hundred dollars paid by Megeath to Whitled paid in your presence?

Ans. It was not.

Ques. 29. At the time you paid the five hundred dollars and took the assignment of these papers have they been in the possession of Whitled or Megeath since that time?

Ans. Have been in my possession since that time until I brought them into court.

Ques. 30. At the time of this assignment to you in the bank was or was not Megeath and Whitled there together until the completion of the transaction, and did they leave together?

(Objected to by compl't as immaterial and irrelevant.)

Ans. I think they were there together, but don't remember whether they left together. I think Mr. Whitled and myself went right up to the stable and got out the buggy.

31. In case the title to this land should fail and thereby you lose your securities and be obliged to resort to your remedy on the note, would you hold Mr. Megeath liable for the whole amount due on the note, interest and all, or is there any understanding, either direct or indirect, between you and Megeath by which you would not claim that full amount?

76 (Objected to by compl't as immaterial and irrelevant.)

Ans. I believe I told Mr. Megeath I should not be hard with him. I should not exact the full amount on the face of the mortgage.

32. What amount did you tell him you should exact?

(Objected to by compl't as immaterial and irrelevant.)

Ans. I believe I told him that if it was paid off soon I should charge him only so as to make a liberal interest for my compensation. It was not definite.

33. Is there any writing between you and Megeath about it?

Ans. No, sir.

34. Has Frank Smith any interest in this note and mortgage?

Ans. I suppose he has.

35. What pro rata of interest in the mortgage and note?

Ans. Mr. Smith and myself have been engaged in business together for a number of years, in this way, each one making his own transactions in his own name, and ultimately dividing the proceeds, neither interfering with the other's bargains.

36. Will you look at the note in question and state whether all the endorsements as appears thereon were there at the time Mr. Whitled signed his name assigning the note to you?

Ans. I couldn't say positively whether they were or were not?

37. From your best recollection will you state that the last endorsement as appears thereon, purporting to be a receipt for eleven hundred dollars from Megeath, was there at the time Whitled signed his name to the assignment?

Answer. My impressions are that it was not. I remember that Mr.
77 Megeath said afterwards the endorsement was not made and must be made.

(The latter part of the answer objected to by def't Simpson, on the ground that it is not responsive to the question and gives declarations of Megeath.)

Cross-examination by complainant.

1. Has Francis Smith any legal interest in this note and mortgage? Have you assigned or conveyed said mortgage and note in any way to Smith or any other person?

(Objected to by def't Simpson, on the ground that question calls for legal opinion of witness, who don't appear to be a lawyer, and seeks to mislead the witness, who has before stated that he has made a certain arrangement with Mr. Megeath by which a mere pro rata or nominal amount of the mortgage and note are to be paid.)

Ans. I presume not. I have not.

2. Who, then, is the present and sole owner of this note and mortgage?

Ans. Myself.

3. Were the eleven hundred dollars which were paid by Megeath to Whitled on this note and mortgage paid before the assignment of the note and mortgage to you?

(Objected to by def't Simpson, for the reason that the witness before stated that he was not present when it was paid and knows nothing of it except as the endorsement shows on the note, and objects to witness giving any statements of Whitled or Megeath in regard to the matter on the ground that that is not the best evidence.)

Ans. Mr. Whitled said when he came in that he had been paid.

4. Did you not buy the mortgage understanding and having been notified that this eleven hundred dollars payment had been made upon it?

78 (Objected to by def't Simpson, as irrelevant and immaterial.)

Ans. I did.

5. Is there any arrangement or understanding between yourself and James G. Megeath or any other person which would prevent you enforcing this mortgage and collecting this note to their full amounts if you choose to do so?

(Objected to by def't Simpson, on the ground that it is calling for a legal conclusion from the witness, who does not pretend to be a lawyer, and is irrelevant.)

Ans. There is none.

6. Where did Whitled reside at the time of this transaction, and where does he at the present time?

(Objected to by def't Simpson as irrelevant.)

Ans. He told me he resided in Texas.

7. Did he give any reasons connected with the place of his residence, why he wished to dispose of this note and mortgage, and his other property here at all events, even if he had to do so at a great sacrifice?

(Objected to by def't Simpson as incompetent, irrelevant, leading, and not proper cross-examination.)

Ans. He did; he said that with the troubles existing in the country he feared that he never should get anything that might be left behind if he didn't settle up at that time, as he expected the government would confiscate all southrons' property at the north.

8. Has there been any payment made on this note and mortgage since it came into your hands or before, that are not endorsed thereon?

Ans. None that I know of.

Re-examined by def't Simpson.

1. Was the arrangement or understanding with Mr. Megeath of which you spoke in your direct examination made before your purchase of this

79 mortgage or subseqnent thereto?

(Objected by compl't, because the question seeks to mislead the witness by stating that he spoke in his direct examination of arrangement or understanding with Megeath, when the witness in fact stated that no such arrangement or understanding existed.)

Ans. Mr. Megeath and I had a great many conversations in regard to it; he was anxious to have me buy it, as he said he knew another party would if I did not.

(Here Simpson objects that portion of the answer as to what Megeath said, on the ground that it is hearsay and not responsive to the question.)

Witness proceeds: And he expected that if the other party purchased the mortgage they would exact payment in full.

2. State what arrangements was made, if any, in regard to Megeath paying any portion of the expenses of this prosecution in any shape or form.

(Objected to by compl't as immaterial.)

Ans. There were no arrangements made.

3. Was there any talk between you and him in regard to the expense of foreclosing this mortgage, and who should pay for it, and what it would cost, &c., and in case title should fail to the land or any part of it?

(Objected to by compl't as immaterial.)

Ans. There may have been some talk between Megeath and myself, but no arrangement made; there never was anything said in reference to the cost.

4. What was said in regard to enforcing the whole note against him in case the title to the land should fail?

(Objected to by compl't as irrelevant, and because it is not proper examination.)

80 Ans. The same was said in reference to that as was said in respect to the mortgage; that is, I should not be hard with him; that if the mortgage was paid off soon I should only charge him a liberal interest for the mortgage.

5. Do I understand you to say that the arrangement was, if any, that if paid soon that you would only charge him the face of the note assigned to you and a liberal interest?

Ans. There was nothing said about the face of the note; I told Mr. Megeath that I must make the transaction pay me a good interest if he paid off the mortgage soon; beyond that I should not be hard with him.

6. Did not you and Mr. Megeath both understand each other that if he, Megeath, paid you the amount of money advanced by you to Whitled and the cost of your buggy soon, and a reasonable interest, and charges for your trouble in the matter, that you would give him up the mortgage and note?

(Objected to by compl't as not proper re-examination.)

Ans. It was understood betwixt Mr. Megeath and myself that if he paid off the mortgage soon he should have the mortgage discharged, but no arrangement was made as to the amount I was to be paid for my compensation.

7. When you say reasonable interest and profit out of the transaction, do you mean to be understood that the reasonable interest and advance, or profit, or compensation was to be over and above the four thousand dollars due on the mortgage that Megeath was to pay, or do you mean reasonable interest and compensation over and above the amount by you paid to Whitled?

(Objected to by compl't as leading and not proper re-examination.)

81 Ans. I meant the latter.

S. N. PARMALEE.

By consent of counsel of the respective parties, Byron Reed, a witness, was produced, sworn, and examined on the part of the defendant Simpson, says:

Ques. 1. Will you state whether you are the same Byron Reed who was before examined in this cause, and whether you are the deputy register?

Ans. I am; and have charge at present of the county records.

Ques. 2. Will you turn to the index books of record and turn to the indexing of a conveyance from George C. Bovey to Andrew J. Simpson, complainant, and state what page it is on and what book it is in?

Ans. This is the index of deeds; the instrument you mention is here indexed as received for record on the 15th day of April, 1858, and recorded in Book J of Deeds, pages 32, 33.

(Here the defendant Simpson gives notice to the complainant that he will produce in court in evidence the records, the Index Book, and Book J, referred to by witness, and offer in evidence the indexing and recording of deed Bovey to Simpson, dated April 15th, 1858, as appears therein.)

Ques. 3. State whether this is Book J of Deeds referred to by you in your last answer.

Ans. It is.

Ques. 4. Were you familiar with the way of receiving deeds for record and filing them in the office of register for deeds in the spring of 1858, and have you any doubt that this deed referred to was actually received for
82 record, and recorded as appears upon these records to which you have referred?

(Objected to by compl't, on the ground that it calls for the witness's opinion and not for his knowledge.)

Ans. I was well acquainted with the manner in which the business of the office was transacted; I believe it was received for record precisely as it purports to have been.

Cross-examination by complainant.

Ques. 1. You was well acquainted with the manner in which the business of the office was transacted. Were you at that time engaged in said office as deputy, or in any capacity whatever, or had you been previous to that time?

Ans. I had not been employed in the office until after that time.

Ques. 2. You say have no doubt the instrument in question was received for record and recorded as it purports to have been. Have you any personal knowledge of that fact?

Ans. I have not.

Ques. 3. When was your attention first called to this deed?

(Objected to by def't Simpson as irrelevant and not a proper cross-examination.)

Ans. I think it was in May, 1860.

Ques. 4. When did you first have any conversation with Mr. Redick about this deed?

(Objected to by def't Simpson as irrelevant and not a proper cross-examination.)

Ans. About the time this suit was commenced.

Ques. 5. Is there any arrangement between yourself and Mr. Redick or Simpson, or any other person by which you are to receive any portion of this land or any other benefit in case Simpson makes his title good to it?

83 (Objected to by def't Simpson as irrelevant and not a proper cross-examination.)

Ans. There is no arrangement by which I am to receive any benefit or by which I have any interest in the case whatever.

BYRON REED.

The further examination of witnesses in this case adjourned till Monday, April 21, A. D. 1862, without further notice.

April 21, 1862, parties did not meet in this case.

October 20th, 1862, parties met pursuant to notice served by defendant Simpson's solicitor. A. J. Poppleton appears as solicitor for complainant. J. I. Redick appears as solicitor for defendant A. J. Simpson.

John A. Horbach, a witness, produced, sworn, and examined on part of defendant Simpson, says:

1. State your age, occupation, and place of residence.

Ans. My age is 30 years; my occupation, forwarding commission merchant, and residence, Omaha City.

2. Was you acquainted with George C. Bovey, and are you acquainted with A. J. Simpson, the defendant herein named; and how long have you known each of them?

Ans. I am acquainted with Bovey, and have known him since the summer of 1856, and Simpson I have known since the fall of 1857 or spring of 1858, when he first came to Omaha.

3. State what you know, if anything, in regard to the said George C. Bovey conveying to said Simpson the land which said Bovey pre-empted in this county, being in sections number twenty-nine and twenty-eight,
84 township fifteen and north, of range thirteen east.

(Objected to by compl't, on the ground of incompetency.)

Ans. I don't know that I know anything definite, but in the winter of 1858 and 1859 I heard Bovey repeatedly say ——

(Here complainant objects to witness stating anything except what he knows of his own knowledge, or repeating any statements of Bovey's, his admissions not being competent testimony in this case.)

Witness proceeds: That he had sold everything he had. I asked him about his interests in the farm with Megeath, to whom he had sold; he said he sold his own pre-emption to Andrew J. Simpson, and the balance he had not yet sold. I asked him what he had done with Megeath's interest in his pre-emptions; he said Megeath had no interest in it, as he had pre-empted it, and had not agreed to deed, and would not.

Cross-examination by complainant.

1. In what months?

(Here compl't ceased to cross-examine.)

J. A. HORBACH.

James G. Megeath, a witness produced, sworn, and examined on part of defendant Simpson, says:

1. Examination of this witness waived by counsel of defendant Simpson.

Same day, (Oct. 20, 1862,) pursuant to notice served by complainant's counsel on solicitors of defendant, the following witnesses were examined:

Byron Reed, a witness produced, sworn, and examined on part of complainant, says:

85 A. J. Poppleton appears as solicitor for complainant. J. I. Redick appears as solicitor for def't Simpson.

Ques. 1. State whether or not you are at the present time acting deputy county clerk and register of deeds for the county of Douglas, Nebraska Territory.

Ans. I am.

2. Describe the book now produced by you before the master and state what it is.

Ans. It is Book J of Deeds, of the records of Douglas County.

Complainant's counsel gives notice that he will offer in evidence the book referred to by witness upon the hearing of this case.

And here defendant Simpson's counsel agrees and consents that the book referred to shall be used and read in evidence on the hearing of this cause.

BYRON REED.

OCTOBER 29th, 1862.

By consent met at my office, in Omaha City, at 7 o'clock a. m. for the purpose only of examining Harrison Johnson on the part of defendant Simpson.

A. J. Poppleton appears as solicitor for compl't. J. I. Redick appears as solicitor for def't Simpson.

Harrison Johnson, a witness produced, sworn, and examined on part of defendant A. J. Simpson, says:

Ques. 1. What business were you engaged in and what was your occupation during the month of April, 1858?

Ans. I was a farmer.

2. With whom was the negotiation made by Whitled when this arrangement in regard to this mortgage was fixed up this last spring a year ago?

(Objected to by compl't, on the ground of incompetency.)

86 Ans. With Megeath.

3. Who paid Whitled the money, and what amount did he receive for giving up the mortgage and note?

(Objected to by compl't, on the ground of incompetency, and because it seeks to mislead the witness by speaking of the giving up of the note and mortgage instead of the assignment thereof.)

Ans. The money was paid down in Frank Smith's office; Mr. Parmalee fetched the money or part of it, and put it on the counter; I do not recollect how much there was.

4. How much, if any, did Megeath pay at the same time that the assignment of the mortgage was made, and in what kind of money was it paid?

(Objected to by complainant as incompetent.)

Ans. The amount I don't recollect now; I know there was a check given.

5. State as near as you can the amount.

Ans. Between fourteen and fifteen hundred dollars.

Ques. 6. State whether there was any of the amount settled at the store of Megeath, and if so, what amount?

(Objected to by compl't as incompetent.)

Ans. I was told by Mr. Whitled.——

(Here complainant objects to anything said by Whitled as incompetent.)

Witness proceeds: That Megeath and he had some dealings at the store; what the amount was I do not know.

7. Was that amount put in and cancelled in this arrangement; that is, what Whitled owed Megeath, if anything, at the store?

(Objected to by compl't as incompetent.)

Ans. I think it was.

8. State about how much was settled by Megeath with Whitled in the store deal and how that deal originated.

(Objected to by compl't as incompetent.)

87 Ans. I don't recollect the amount; it is so long that I have not thought anything about it; it originated in settling up this mortgage.

9. State what conversation you heard, if any, as passing between Megeath and the complainant Parmalee, or between Parmalee, Whitled, and Megeath in regard to the giving up of this mortgage and note, and in regard

to Parmalee advancing for Megeath a portion of this money. Please state all the conversation on that subject you heard between them.

(Objected to as incompetent by complainant.)

Ans. Mr. Megeath told Mr. Whitled to come down after dinner to Parmalee's office and they would try and fix the matter up; they went there, and there was where it was fixed; Mr. Parmalee brought out part of the money on the counter that was paid to Whitled, and I think the papers was left with him; I didn't pay much attention to the conversation between Parmalee and Megeath.

10. Please answer this question: What was said between Parmalee and Megeath at any time during this negotiation in regard to Parmalee advancing for Megeath a portion of the money with which to take up that mortgage? And what did you learn from Megeath, Parmalee, Whitled, or either or all of them, was the arrangement between Megeath and Parmalee in taking up of that note and mortgage?

(Objected to by compl't as incompetent.)

Ans. I don't recollect of hearing anything said between Megeath and Parmalee together about the matter; my understanding was that Megeath had taken up the mortgage; what arrangements was made with Parmalee I did not know.

11. Do I understand you to mean that you gathered this under-
88 standing from the several parties? And I believe you have before stated that you helped Whitled to fix up the matter.

(Objected to by compl't, on the ground of incompetency.)

Ans. I did.

Ques. 12. What did Megeath tell you, if anything, before or after the fixing up of the assignment of this mortgage in regard to having Parmalee bring suit on this mortgage and have it foreclosed for his, Megeath's, benefit, and if he said anything on that subject, what did he say?

(Objected to by compl't as incompetent.)

Ans. Megeath told me before this mortgage was fixed up that he couldn't do it unless he could get some money. Since then he has told me that the mortgage belonged to Parmalee; that's all I know.

(Def't Simpson objects to this answer, on the ground that it is not responsive to the question.)

13. When did he tell you that?

Ans. It has been some time ago; I can't recollect how long?

14. What did he tell you before or after the negotiation, if anything, in regard to Parmalee's foreclosing this mortgage for Megeath's benefit?

(Objected to by compl't as incompetent.)

Ans. He hasn't told me anything.

15. At the time this assignment was made, were you present at the time?

Ans. I was.

16. Did you see all the money paid, including the check?

(Objected to by complainant, on the ground of incompetency.)

Ans. I did of the fourteen or fifteen hundred dollars.

17. Did you see Whitled sign his name to the assignment, and was the money then handed over to him by Parmalee and Megeath?

(Objected to by compl't as incompetent.)

89 Ans. I saw him sign his name to a paper; I didn't look at the paper; I supposed at the time it was an assignment of the mortgage, but asked no questions; the money was then on the counter; it was passed over to him.

18. How long have you known James G. Megeath, and were you in the spring of 1861 well acquainted with his business affairs and pecuniary responsibility?

Ans. I have known him since 1857; I can't say that I was acquainted with his pecuniary affairs; I always considered him good, responsible.

19. What was Megeath engaged in in the spring of 1861, and if you should answer merchandising, did he not rank among the first and heaviest dealers in the city of Omaha?

(Objected to by compl't as incompetent.)

Ans. He was engaged in selling goods or merchandising; I always considered him good; the firm did; the firm was Megeath, Richards & Company.

Cross-examination by complainant.

1. You state in your direct examination that when Whitled had fixed his signature to the assignment of the mortgage to the complainant, the money was lying on complainant's counter, and was immediately passed over to Whitled. Who placed the money on the counter?

Ans. Mr. Parmalee.

2. Did you not understand this money to be the consideration of said assignment?

(Objected to by def't Simpson, on the ground, 1st, it is leading; 2d, it seeks to stultify the witness, he having before stated that the money put on the counter by Parmalee and the check put on the counter by Megeath composed the consideration.)

90 Ans. I did.

3. Were not all the papers left with Parmalee?

Ans. I am not positive, but I think they were.

4. Have you ever heard Mr. Parmalee say that this mortgage had been fixed up or paid?

(Objected to by def't Simpson, on the ground that it is incompetent and not proper cross-examination.)

Ans. I have not.

Re-examination by def't Simpson.

1. When you speak of money on the counter, what do you mean, simply the amount Parmalee had on the counter, or do you mean the amount Parmalee had on the counter and the check paid in by Megeath, making the amount of fourteen or fifteen hundred dollars?

Ans. I mean the money that Parmalee put on the counter and the check of Megeath's.

2. What did Megeath tell you, if anything, about the time of the taking up of the mortgage in regard to Parmalee letting him have the mortgage by paying him back the amount he paid and a reasonable advance thereon?

(Objected to by compl't as not proper re-examination.)

Ans. He didn't tell me anything.

3. Don't you know that this is a friendly and amicable suit between Parmalee and Megeath in order to obtain or keep title to the land pre-empted by George C. Bovey? And if you know it, state your means of knowledge.

(Objected to by compl't as not a proper re-examination.)

Ans. I know nothing about any arrangement between Megeath and Parmalee about this suit.

HARRISON JOHNSON.

91 October 30, 1862, by consent of solicitors of respective parties met at my office, in Omaha, at 1½ o'clock, said day, to examine witness O. T. Davis on part of complainant as to the genuineness of the signature of Alfred Sayre to acknowledgment of Schedule "C."

Oscar F. Davis, a witness produced, sworn and examined on part of complainant, says :

1. State your age, occupation, and place of residence.

Ans. My age is 35 years; occupation, surveyor, and place of residence Omaha City, Douglas County, N. T.

2. Are you acquainted with Alfred Sayre and his handwriting ? State how long and how well have known him and it.

Ans. I am well acquainted with Alfred Sayre and his handwriting. I have known him since 1858, in the fall. In the spring of 1859, he occupied my office with me, to sleep there. He staid with me until February, 1860, when he went to Denver City. I have been well acquainted with his handwriting since he came into my office.

3. Examine the signature appended to the purported acknowledgment in Schedule "C" and state whether or not the same is Alfred Sayre's genuine signature.

Ans. I have examined the signature referred to, and it is not, my opinion, the signature of Alfred Sayre.

Cross-examination by defendant Simpson.

1. Might not you be mistaken ?

(Question waived by def't.)

O. F. DAVIS.

November 3, 1862, met at my office, in Omaha, at 7 o'clock p. m.,
92 by order made by district court in chancery for Douglas County. A. J. Poppleton appears for complainant. J. I. Redick appears for def't Simpson.

John I. Redick, a witness produced, sworn and examined on part of defendant A. J. Simpson, says :

Ques. 1. State your age, occupation, and place of residence.

Ans. My age is 34 years; occupation, attorney-at-law, and residence is Omaha City.

2. Are you acquainted with Alfred Sayre and his handwriting, and if so, how long have you known him and how well are you acquainted with his handwriting ?

Ans. I became acquainted with Alfred Sayre in the year 1857, and knew him, and practiced law with him in the county of Douglas, until he left for the west, which was, I think, in the year 1860, or the last of the year 1859. I have seen him write very often while practicing with him and I have seen him write often in taking testimony before him as a master in chancery, and I consider myself well acquainted with his handwriting. I have seen his name to reports in chancery made by him, some of which I now have in my office.

3. Look at exhibit in this case marked "C" and state whether you have examined the signature of Alfred Sayre thereunto annexed as the officer who took the acknowledgment, and whether that is his genuine signature and his handwriting.

Ans. I have examined exhibit marked "C", and the signature purporting to be Alfred Sayre's as notary public carefully, and have taken pains to compare it with those which are admitted to be his signatures, and I believe
93 it to be his handwriting and his genuine signature, at least I think there is no doubt of it. I do not pretend to be an expert, yet after the many comparisons I have made of that signature I think I can safely say that it is his genuine signature.

Cross-examination by complainant.

Ques. 1. Will you undertake to say that you may not be mistaken?
Ans. I will not undertake to say that, although I think I cannot be.

JOHN I. REDICK.

John H. Kellom, a witness produced, sworn, and examined on part of defendant Simpson:

Ques. 1. State your age, occupation, and place of residence.

Ans. My age is 42 years; occupation, clerk of court, and place of residence Omaha, Douglas County, N. T.

2. Are you acquainted with Alfred Sayre and his handwriting? and if so, how long have you known him and how well are you acquainted with his handwriting and his signature?

Ans. I am acquainted with him and have known him ten or eleven years. I am as well acquainted with his handwriting and his signature as anybodies.

3. Look at the paper marked Schedule "C" in this cause and state whether the signature purporting to be that of Alfred Sayre, who took the acknowledgment, is his genuine signature and handwriting.

Ans. I am strongly of the opinion that the signature and handwriting is his.

4. State whether you have taken pains to compare this signature with those you know to be his, and do you think there can be any doubt but what that is the signature of Alfred Sayre?

Ans. I have taken pains to compare that signature with those that
94 I know to be his. I have but little doubt but that it is Sayre's signature.

5. Have you any doubt of it in your mind?

Ans. I have but little doubt in my own mind but that it is Sayre's signature.

Cross-examination by complainant.

Ques. 1. You say you have but little doubt that the signature is genuine. Upon what is whatever doubt you have based?

Ans. It is based upon the fact that the signature of presidents of banks have been so closely imitated that they have been puzzled to determine whether they were genuine or not.

2. Do you see anything in the signature itself or the acknowledgment to which it is appended, which raises a doubt of its genuineness in your mind? State fully.

(Objected to by def't Simpson to that portion of the question which alludes to the acknowledgment aside from the signature alone, on the ground that it is not a proper cross-examination.)

Ans. I see nothing in the signature itself to raise any doubt. The seal is not such as Mr. Sayre was accustomed to use in his business with me. His seal was a notarial seal with the words "notary public, Douglas Co., Alfred Sayre," while the seal on this document marked "C" is a scroll in which is written the words "notarial seal."

3. Do you claim to be an expert in judging of handwriting?

Ans. I do not.

4. Might you not be mistaken in your belief that the signature in question is genuine?

Ans. There is a possibility that I might be mistaken, but I think
95 not a probability.

J. H. KELLOM.

Phineas W. Hitchcock, a witness produced, sworn, and examined on part of defendant Simpson, says :

Ques. 1. State your age, occupation, and place of residence.

Ans. My age is 31 years; occupation, U. S. marshal; and place of residence, Omaha, Douglas County, N. T.

2. Are you acquainted with Alfred Sayre and his handwriting? and if so, how long have you known him ? And how well are you acquainted with his handwriting and signature ?

Ans. I am acquainted with Alfred Sayre, I knew him from the summer of 1857 till the time of his leaving, I think in the spring of 1860. I think I knew his signature and handwriting pretty well. I roomed with or officed with him from the time I first knew him till he went away most of the time.

3. Will you look at the paper marked Schedule "C" in this suit and at the signature purporting to be that of Alfred Sayre, who took the acknowledgment, and state whether that is his genuine signature and his handwriting ?

Ans. It resembles Mr. Sayre's signature as he frequently wrote it. I cannot positively swear that I believe it is his.

4. What is your best opinion on the subject as to the signature alone ?

Ans. I haven't got a decisive opinion. I couldn't swear positively either way.

P. W. HITCHCOCK.

96 Byron Reed, a witness produced, sworn, and examined on part of defendant Simpson.

Ques. 1. Are you acquainted with Alfred Sayre and his handwriting? and if so, how long have you known him ? And how well are you acquainted with his handwriting and signature ?

Ans. I am acquinted with him since about the summer of 1857. I am acquainted with his handwriting, but not as well as I am with some others.

2. Look at paper marked Schedule "C" in this suit, and look at the signature purporting to be that of Alfred Sayre, who took the acknowledgment, and state whether that is his genuine signature and his handwriting, and state whether you have compared it with others you know to be his.

Ans. I have compared it, and believe the signature to be genuine.

3. Have you any doubt in your own mind that Alfred Sayre wrote that signature himself?

Ans. I have no doubt of it in my own mind.

Cross-examination by complainant.

Ques. 1. Will you undertake to say that you might not be mistaken ?

Ans. I will not.

BYRON REED.

Defendant here closes the case, his testimony unless further testimony upon notice or order of the court.

George B. Lake, a witness produced, sworn and examined on the part of complainant.

Ques. 1. State your age, occupation, and place of residence.

Ans. My age is 35 years; occupation, attorney-at-law; and residence, Omaha City, Douglas County, N. T.

97 2. Are you aquainted with Alfred Sayre and with his handwriting ? If so, state how long you have known him and what opportunities you have had for becoming familiar with his handwriting.

Ans. I am acquainted with Alfred Sayre and with his handwriting. I became acquainted with him in the winter of 1857 and 1858, and saw him very

frequently from that time up to the spring of 1860, when he went to Denver City, since which time I have not seen him. I had very good opportunities to become familiar with his handwriting from the fact that his office and mine were very near to each other during most of the time I was acquainted him; and he being notary public and master commissioner in chancery, my business frequenty called me to his office to get his signature to instruments, such as deeds and various orders relative to chancery matters, of which I have now quite a number in my possession.

3. Examine the signature appended to the purported acknowledgment of the instrument marked Schedule "C" in this case, and state whether or not the same is the genuine signature of the said Alfred Sayre.

Ans. I have examined the purported acknowledgment referred to, and from my knowledge of the handwriting and signature of Alfred Sayre, and from a recent comparison of that signature with some six or eight of his genuine signatures now in my possession, I believe the signature here referred to is not his genuine signature, but would not be positive.

Cross-examination by def't Simpson.

Ques. 1. You speak of your office being quite near to that of Sayre's and of your being frequently in and about his office. Will you now state whether or not Mr. Sayre as notary public took a large number of acknowledgments of deeds and other instruments in the spring of 1858?

98

Ans. I do not know that he took a single acknowledgment during that spring. I do not now remember of any particular time when he did take any acknowledgments.

GEO. B. LAKE.

Andrew J. Poppleton, a witness, produced, sworn and examined on part of complainant.

Ques. 1. State your age, occupation, and place of residence.

Ans. My age is 32 years; occupation, attorney-at-law; and place of residence, Omaha City, Douglas Co., N. T.

2. Are you acquainted with Alfred Sayre and with his handwriting? If so, state how long you have known him and what opportunities you have had of becoming familiar with his handwriting.

Ans. I am acquainted with Alfred Sayre and with his handwriting. I became acquainted with him in the spring or summer of 1857, and knew him until he left here, in March, 1860, and have had frequent correspondence with him since he left here, and have now in my possession several letters written to myself. In the summer and fall of 1857 I was alone in business and was frequently pressed with work and I was accustomed very often to get Mr. Sayre to draw original papers and pleadings in cases, and also to make copies for my use. This practice continued to a greater or less extent until Mr. Lake came to the country, in December, 1857. In the spring of 1858 Mr. Lake was absent in Michigan nearly three months, and during his absence Mr. Sayre was in the habit of assisting me in like manner whenever I needed his assistance. In this way I almost daily saw his handwriting, and believe myself quite familiar with it, especially during the months of September, October and November in 1857, and the months of March, April and May in 1858.

99

Ques. 3. Examine the signature appended to the purported acknowledgment of the instrument marked Schedule "C" in this suit, and state whether or not the same is the genuine signature of the said Alfred Sayre.

Ans. I have examined the signature in question and from my knowledge of his handwriting as heretofore stated, and from a comparison of the signature in question with a large number which are admitted to be genuine I

have no hesitation in saying that I believe the signature in question is not the genuine signature of Alfred Sayre.

Cross-examination by def't Simpson.

Ques. 1. Can you swear positively that the signature in question is not the signature of Alfred Sayre?

Ans. I will not swear positively that I know it not to be, but I will swear that I fully believe it not to be.

A. J. POPPLETON.

November 4, 1862, met at my office in Omaha, at 8 o'clock a. m., pursuant to order of court. A. J. Poppleton appears for complainant. J. I. Redick appears for defendant Simpson.

James M. Woolworth, a witness, produced, sworn and examined on part of complainant, says:

Ques. 1. State your age, occupation, and place of residence.

Ans. My age is 33 years; occupation, attorney-at-law; and residence, Omaha City, Douglas Co., Nebraska.

2. Are you acquainted with Alfred Sayre and his handwriting? If so, how long have you known him and what opportunities have you had of becoming familiar with his handwriting and signature?

100

Ans. I have been very well acquainted with Mr. Sayre from the time he came to this Territory, which was, I think, in the summer of 1857. I have seen him write his name, and am well acquinted with his handwriting.

3. Examine the signature appended to the purported acknowledgment in the instrument marked Schedule "C" in this case, and state whether or not it is the genuine signature of the said Alfred Sayre.

Ans. I have examined the said signature, and from my knowledge of his handwriting I am very confident that signature is not genuine.

Cross-examination by def't Simpson.

Ques. 1. What is the difference between that signature and those of Sayre's? Please state.

Ans. The most marked difference between this signature and his genuine signature are, first, in the letter "d," its formation and distance from the other letters in the word Alfred, and the whole formation and character of the word "Sayre."

2. Will you state what the difference is in the formation of the word "Sayre" from that of his genuine signature of that portion of his name?

Ans. I have answered the question as fully as I am able.

3. Is the "S" unlike his?

Ans. It is.

4. Is the "y" unlike his?

Ans. I think it is.

5. Is the "re" unlike his?

Ans. I think it is.

6. Have you seen and compared the signature attached to that paper with his signature dated about that time to other papers? and if so, state what papers they were and how many comparisons you have made.

101

Ans. I have not made any comparison whatever. I have a very distinct recollection of the general appearance of Sayre's signature. He wrote with great ease, and in his signature there was nothing whatever that was cramped or generally irregularly, though I am not able to describe any one single letter in all his signature. My recollection of its style and character is very distinct.

JAS. M. WOOLWORTH.

Nov. 4, 1862. By permission of court, John I. Redick, solicitor for defendant Simpson, gives notice to complainant that he will offer in evidence on the hearing of this cause papers or letters with the genuine signature of Alfred Sayre, with proof of their genuineness, for the only purpose of showing that the name of Alfred Sayre to the instrument marked Schedule "C" in this cause is his genuine signature.

And thereupon neither party offering any further testimony, the examination of this cause is closed.

DAN. GANTT, *Master in Chancery.*

NEBRASKA TERRITORY, *Douglas County, ss:*

I, Daniel Gantt, master in chancery in and for said county, do hereby certify that the above-named witnesses William F. Sapp, A. L. King, Harrison Johnson, Andrew J. Simpson, Charles E. Parcels, Byron Reed, Samuel
102 N. Parmalee, John A. Horbach, Oscar F. Davis, John I. Redick, John H. Kellom, P. W. Hitchcock, George B. Lake, Andrew J. Poppleton and James M. Woolworth were by me sworn to true answers make to all such questions as should be propounded to them upon the examination of this cause, pending in the district court of Douglas County in chancery, wherein Samuel N. Parmalee is complainant and Andrew J. Simpson and others are defendants, without favor or affection to either party, and therein they should speak the truth, the whole truth, and nothing but the truth. And I further certify that the said depositions were reduced to writing by me and were signed by said witnesses in my presence, and that they were taken at my office in Omaha City, Douglas County aforesaid, upon the several days thereon named, and that the solicitors of the respective parties attend at the respective times when the same were taken.

Witness my hand this 4th day of November, A. D. 1862.

DAN. GANTT, *Master in Chancery.*

Deed.

In consideration of the sum of four thousand five hundred dollars, the receipt of which is hereby acknowledged, we, James G. Megeath and Virginia C. Megeath and George C. Bovey, of the county of Douglas and Territory of Nebraska, do hereby sell and convey to Robert B. Whitled, of Grayson County, in the State of Texas, the following described property, to wit: Commencing at quarter section corner at the centre of section twenty-eight, in township fifteen north, of range thirteen east of the 6th principal mer-
103 idian; thence south 54° 30′; thence east 26 50-100 chains; thence south 3 25-100; thence south 36° 30′; thence west 16 25-100 chains; thence south 67° 30′; thence west 7 2-100; thence south to the northwest corner of Crawford's lot; thence south 41° west 4 55-100 to the quarter section corner; then north 40 chains on the centre section line to the place of beginning. Also the southwest quarter of section twenty-eight aforesaid, and the east half of the southeast quarter of section twenty-nine, and the east half of the west half of the southeast quarter of said section twenty-nine, and township and range aforesaid. And we do hereby covenant with the said Robt. B. Whitled that we are lawfully seized of the premises above described; that they are free from incumbrance. And we do hereby farther covenant to warrant and defend the said described premises against the lawful claims of all persons whomsoever.

The above conveyance is subject to the following conditions, to wit: that whereas a certain promissory note, drawn jointly by James G. Megeath and George C. Bovey, in favor of Robert B. Whitled for the sum of four thousand

five hundred dollars, payable in six months from the seventh day of April, A. D. 1858, with interest at one per cent. per month from date: Now, if the said James G. Megeath and Geo. C. Bovey pay or cause to be paid the amount of said note, on or before its maturity, and save harmless therefrom the said Robt. B. Whitled, then this obligation to be void; otherwise, of full force and virtue.

The said note is also subject to the following condition, viz: that if the amount specified in said note cannot be paid (by a reasonable exertion)
104 at the expiration of six months, then the said note is to be extended for six months from the time it is due, and the conditions of this mortgage to extend for the same length of time without default or subject to foreclosure.

Witness our hands this 17th day of April, A. D. 1858.

JAS. G. MEGEATH. [SEAL.]
VIRGINIA C. MEGEATH. [SEAL.]
GEORGE C. BOVEY. [SEAL.]

Attest: HARRISON JOHNSON.
A. L. KING.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

On this 17th day of April, A. D. 1858, before me appeared the above-named James G. Megeath and Virginia C. Megeath, his wife, and George C. Bovey, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary acts and deeds.

[SEAL.] A. L. KING, *Notary Public.*

SCHEDULE A.—*Assignment.*

For value rec'd I hereby assign all my right, title, and interest in and to the foregoing mortgage to Samuel N. Parmalee, of Omaha, N. T.

May 17th, 1861.

R. B. WHITLED.

Witness: W. F. SAPP.

The following endorsement appears thereon, to wit:
105 Rec'd for record, April 17th, 1858, at 6 o'c. p. m., and recorded in mortgage book A, page 67.

THOS. O'CONNOR, *Register of Deeds.*

SCHEDULE B.—*Note.*

$4,500. OMAHA CITY, N. T., *April* 7, 1858.

Six months after date, for value received, we, or either of us, promise to pay to Robert B. Whitled, or order, the sum of four thousand five hundred dollars, together with interest thereon at the rate of one per cent. per month from the 7th day of April, A. D. 1858, until paid.

JAMES G. MEGEATH. [SEAL.]
GEORGE C. BOVEY. [SEAL.]

The following endorsement appears thereon in words and figures following, to wit:

MAY 6, 1859.

Received of J. G. Megeath three hundred and fifteen dollars, being the interest for seven months on the within note.

H. D. JOHNSON,
For R. B. WHITLED.

I have received of H. D. Johnson the above am't of three hundred and fifteen dollars.

Aug. 11, 1859.

R. B. WHITLED.

Rec. on the within one hundred dollars.

R. B. WHITLED.

For value rec'd I assign the within note to Samuel N. Parmalee.

106 May 17, 1861.

R. B. WHITLED.

Witness: W. F. SAPP.

Rec'd, May 17th, 1861, from James J. Megeath, eleven hundred dollars on the within note.

Deed.

To all whom these presents shall come, greeting:

Know ye that I, Andrew J. Simpson, party of the first part of , for the consideration of two thousand dollars received to his full satisfaction of George C. Bovey, party of the second party, of Omaha City, N. T., do grant, bargain, sell, and confirm unto the said parties of the second part, his heirs and assigns, all the following described property, situated in the county of Douglas and Territory of Nebraska, to wit: The east one half of the south-east quarter of section twenty-nine, and the west half of the southwest quarter of section twenty-eight, in township fifteen north, of range thirteen east of the 6th p. m., in the Territory of Nebraska.

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for himself and his heirs, executors and administrators, does covenant with the said party of the second part, his heirs and assigns, that at and until the unsealing and delivering of these presents, that he is well seized of the premises as of a good and indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form aforesaid, and that the same are free from all incumbrance whatsoever.

107 And the said party does hereby bind himself and his heirs to warrant and forever defend the above granted and bargained premises unto the said party of the second part, his heirs and assigns, against all claims and demands whatsoever.

In witness whereof, the said party of the first part hereunto sets his hand and seal this 17th day of April, A. D. 1858.

ANDREW J. SIMPSON. [SEAL.]

I presence of—

G. L. BARKER.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Be it remembered, that on this the seventeenth day of April, eighteen hundred and fifty-eight, before me, the undersigned, a notary public within and for said county, came the above-named George C. Bovey, known to me to be the identical person whose name stands affixed to the foregoing instrument as grantors, and acknowledge the same to be their voluntary act and deed.

[SEAL.]

ALFRED SAYRE,
N. P., Douglas County, N. T.

The following endorsement appears thereon, to wit:

Rec'd for record April 17th, 1858, at 9 o'c. a. m. Recorded in book J, page 242.

THOMAS O'CONNOR,
Register of Deeds, Douglas County.

Schedule C, in the case of Sam'l N. Parmalee *vs.* George C. Bovey
108 and others, No. 201; and this same is offered in evidence in the case of Andrew J. Simpson *vs.* J. G. Megeath and others, No. 196, and for said case is marked Schedule B. Both said cases now pending in district court, Douglas county, N. T.

DAN. GANTT, *Master in Chancery.*

SCHEDULE D.

And thereupon the copy of deed appears in words and figures following, to wit:

Bovey to Simpson.

To all to whom these presents shall come, greeting:

Know ye that I, George C. Bovey, party of the first part, of the city of Omaha, Nebraska Territory, for the consideration of two thousand dollars, received to his full satisfaction of Andrew J. Simpson, party of the second part of , does grant, bargain, sell, and confirm unto the said parties of the second part, his heirs and assigns, all the following described property, situated in the county of Douglas and Territory of Nebraska, to wit: The east one half of the southeast quarter of section twenty-nine, and the west half of the southwest quarter of section twenty-eight, in township fifteen north, of range thirteen east of the sixth pricipal meridian, in the said Territory of Nebraska.

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said party of the second part, his heirs and assigns, forever. And the said party of the first part, himself and his heirs, executors, and administrators, does covenant with the said party of the second part, his heirs and assigns, that at and until the unsealing and delivering of these presents, that he is well seized of the premises, and have good right to bargain and sell the same in manner and form aforesaid,
109 and that the same are free from all incumbrance whatsoever.

And the said party does hereby bind himself and his heirs to warrant and forever the above granted and bargained premises unto the said party of the second part, his heirs and assigns, against all claims and demands whatsoever.

In witness whereof the said party of the first part hereunto set his hand the fifteenth day of April, A. D. 1858.

GEORGE C. BOVEY.

In presence of—
ALFRED SAYER.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Be it remembered, that on this the fifteenth day of April, eighteen hundred and fifty-eight, before me, the undersigned, a notary public within and for said county, came the above-named George C. Bovey, known to me to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the same to be his voluntary act and deed.

[SEAL.]

ALFRED SAYER,
N. P., Douglas County, N. T.

Recorded April 15, 1858.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Peter Hugus, county clerk and ex officio register of deeds in and for said county, do hereby certify that the foregoing is a true and correct

transcript from pages 233 and 234 of book T of Deeds of the records of Douglas County aforesaid.

110 Given under my hand and official seal this seventh day of March, A. D. 1862.

PETER HUGUS, *County Clerk and*
Ex officio Register of Deeds for Douglas County, N. T.
By BYRON REED, *Deputy.*

And afterwards, to wit, on the 4th day of November, A. D. 1862, a motion to offer in evidence letters, &c., was filed in said clerk's office; which motion has been lost and cannot be found among the papers filed in said cause.

And afterwards, to wit, on the day and year last above written, leave was given by the court to take additional testimony.

And afterwards, to wit, on the 9th day of November, A. D. 1862, exceptions to the report of the master were filed in said clerk's office; which said exceptions have been lost and cannot be found among the papers filed in said cause.

And thereupon, afterwards, to wit, on the 13th of November, A. D. 1863, there was filed in said clerk's office, and entered on the journal, a decree of the court in said cause, William P. Kellogg, judge; which said decree was in the words and figures following, to wit:

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

At a term of said court, begun and held at Omaha City, in said
111 county, on Monday, the 9th day of November, A. D. 1863.
Present: The Honorable William Pitt Kellogg, judge of said court.

SAMUEL N. PARMALEE, complainant,
vs.
JAMES G. MEGEATH, VIRGINIA C. MEGEATH, GEORGE C. BOVEY, and Andrew J. Simpson, defendants.

This cause having been this day brought on to be heard on the bill of complaint filed therein and the answer of Andrew J. Simpson, the said bill having been taken as confessed against all the other defendants, and the replication of the complainant thereto, and upon the report of Daniel Gantt, esquire, one of the masters of this court; which report bears date and was filed on the fourth day of November, A. D. 1862, and was made in pursuance of an order of reference heretofore made in this cause.

On reading and filing said report, from which it appears that there was due to the said complainant at the date of said report, for interest on the principal sum specified in said mortgage and note mentioned and described in said complainant's bill, together with the said principal sum, the sum of five thousand four hundred and fifty-five dollars and fifty cents.

On motion of A. J. Poppleton, solicitor for complainant, it is ordered, adjudged, and decreed by the court that the said report and all things therein contained, do stand ratified and confirmed. And it is further ordered, adjudged, and decreed that so much of the mortgaged premises mentioned in the
112 bill of complaint in this cause and hereinafter described, as may be sufficient to raise the amount so reported as actually due to the complainant for interest and principal as aforesaid, and the costs in this case, and accruing interest, be sold at public auction by Daniel Gantt, esquire, one of the masters of this court; that the said master give public notice of the said sale for the same time and in the same manner as is required by law, on sale of real estate on execution by the sheriff, and that the complainant or other party may become the purchaser at said sale, and that the said master

execute a deed to the purchaser or purchasers of the mortgaged premises on said sale, and that the said master, out of the proceeds of said sale, retain his fees, disbursements, and commissions on said sale, and pay to the complainant or to his solicitor, the amount of his debt, interest, and costs, or so much thereof as the purchase-money will pay of the same, and that he take the receipt of the complainant or his solicitor for the amount so paid, and file the same with his report of sale, and that the purchaser be let into the possession of the premises sold on production of the master's deed, and that he bring the surplus monies arising from such sale, if any there be, into court without delay, and deliver the same to the register, and take his receipt therefor.

And it is further ordered, adjudged, and decreed that the defendants and all persons claiming under them, and all persons having liens subsequent to said mortgage, by judgment or decree, upon the land contained in said mortgage, and his or their heirs or personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs or personal representatives, and all persons claiming
113 under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to so much of said premises as shall be sold, and every part and parcel thereof, and that any of the parties in this cause who may be in possession of said premises or any part thereof which shall be sold, and any person who since the commencement of this suit has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers on production of the master's deed for such premises and a certified copy of the order confirming the report of such sale.

And it is further ordered, adjudged, and decreed that if the moneys arising from such sale of the whole of said premises shall be insufficient to pay the amount so reported as actually due to the said complainant, with interest and costs, and expenses of sale as aforesaid, that said master specify the amount of such deficiency in his report of said sale, and that on the coming in and confirmation of said report the defendant James G. Megeath, who is personally liable for the payment of the debt secured by said mortgage, pay to the complainant the amount of such deficiency, with interest thereon from the date of such last mentioned report, and that the complainant have execution therefor.

The following is a true and correct description of the property authorized to be sold under this decree, namely:

Situate in the county of Douglas and Territory of Nebraska, commencing at quarter section corner of the centre of section twenty-eight, in township fifteen north, of range thirteen east of the sixth principal
114 meridian; thence south 54° 30′; thence east 26 50-100 chains; thence south 3 25-100; thence south 36° 30′; thence west 16 25-100 chains; thence south 67° 30′; thence west 7 02-100; thence south to the northwest corner of Crawford lot; thence south 41° west 4 55-100 to the quarter section corner; thence north 40 chains on the centre section line to the place of beginning; also the southwest quarter of section twenty-eight, the east half of the southeast quarter of section twenty-nine, and the east half of the west half of the southeast quarter of section twenty-nine, all in township fifteen north, in range thirteen east of the 6th principal meridian.

By the court. W. P. KELLOGG, *Judge.*

And thereupon, afterwards, to wit, on the 16th day of March, A. D. 1864, the master's report of sale was filed in said clerk's office; which said report of sale was in the following words and figures, to wit:

SAMUEL N. PARMALEE
vs.
GEORGE C. BOVEY *et al.* } In chancery, Douglas County, N. T.

To the honorable the judge of the district court for said county:

Whereas by a decretal order of this court made in the above-entitled cause, bearing date the 14th day of November, A. D. 1863, it was, inter alia, ordered, adjudged, and decreed that all and singular the bill of complaint in this cause, namely "situate in the county of Douglas and Territory of Nebraska, commencinng at quarter section quarter at the centre of twenty-eight in township fifteen north, of range thirteen east of the sixth principal
115 meridian; thence south 54° 30′; thence east 26 50-100 chains; thence south 3 25-100; thence south 36° 30′; thence west 16 25-100 chains; thence south 67° 30′; thence west 7 02-100; thence south to the northwest corner of Crawford lot; thence south 41° west 4 55-100 to the quarter section corner; thence north 40 chains on the centre section line to the place of beginning; also the southwest quarter of section twenty-eight, the east half of the southeast quarter of section twenty-nine, and the east half of the west half of the southeast quarter of section twenty-nine, all in township fifteen north, in range thirteen east of the sixth principal meridian; or so much thereof as may be sufficient to raise the amount due to the complainant for principal, interest, and costs in that cause, and which may be sold seperately without injury to the parties, be sold at public auction by or under the direction of Daniel Gantt, one of the masters of this court:

Now, therefore, I, the undersigned, said master do respectfully certify and report that in pursuance and by virtue of the said decretal order, and having been charged by the solicitor for complainant with the execution thereof, I advertised all the said premises to be sold by me at the south door of the court-house, in Omaha, in Douglas County aforesaid, on the 23d day of January, A. D. 1864, by causing a notice of the time and place of said sale and of the description of said premises to be printed and published for at least thirty days immediately preceding said sale, in the Omaha Nebraskian, a newspaper printed and published in said county of Douglas.

I further certify and report that I attended at the time and place so as aforesaid fixed for the said sale, and offered all the said premises for sale at public auction to the highest bidder, and that of portion of said prem-
116 ises "commencing at quarter section corner of the centre of section twenty-eight, in township fifteen north, of range thirteen east; thence south 54° 30′; thence east 26 50-100 chains; thence south 3 25-100 chains; thence south 36° 30′; thence west 16 25-100 chains; thence south 67° 30′; thence 7 02-100; thence south to the northwest corner of Crawford's lot; thence south 41° west 4 55-100 to the quarter section corner; thence north 40 chains in the centre section line to the place of beginning, in township fifteen north, of range thirteen east," was then and there struck off to Samuel A. Megeath, at and for the sum or price of two hundred dollars; also the southwest quarter section twenty-eight, in township fifteen, range thirteen east, was then and there struck off to Samuel A. Megeath, at and for the sum or price of four hundred and seventy-five dollars; also the east half of the southwest quarter of section twenty-nine, in township fifteen, range thirteen east, was then and there struck off to said Samuel A. Megeath, at and for the sum or price of two hundred and fifty dollars; also the east half of the west half of the southeast quarter of section twenty-nine, in township fifteen, range thirteen east, was then and there struck off to said Samuel A. Megeath, at and

for the sum of one hundred dollars, amounting in all to the sum of one thousand and twenty-five dollars, the said Samuel A. Megeath being the highest bidder, and said several sums being the highest price bidden for said premises.

I have retained the sum of one hundred and seven dollars and sixty-five cents, being the amount of fees, commissions, and disbursements on said sale, as will appear by reference to the statement of items thereof annexed to this my report, and I have paid to the complainant the sum of nine hundred and seventeen dollars and thirty-five cents, being the balance of the
117 proceeds of said sale after deducting the amount of fees, commissions, and disbursements as aforesaid, for which I have taken a receipt.

I further certify and report that the sum of $917 35, so as aforesaid paid to the complainant, is insufficient to pay the debt due the complainant with interest thereon and costs, and that the amount of such deficiency is the sum of $4,719 65.

All which is respectfully submitted.

DAN. GANTT, *Master in Chancery.*

Dated March 10, 1864.

Statement of disbursements, &c.

Printers' bills		$22 25
Costs of depositions		19 25
Master's fees on rep		31 68
Clerk's fees		14 52
Sheriff's fees		70
Sale	1 00	
Report of sale	1 00	
Stamp and deed	4 00	
Commissions	13 25	
		19 25
		107 65

And thereupon, afterwards, to wit, on the 18th day of March, A. D. 1864, an order of confirmation of said master's sale was made by the court, William P. Kellogg, judge, and filed and entered on the journal; which said order was in the words and figures following, to wit:

In the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

Present: Honorable William Pitt Kellogg, judge of said court.

SAMUEL N. PARMALEE
vs.
GEORGE C. BOVEY *et al.*

On reading and filing the report of Daniel Gantt, esquire, one of the masters of this court, of the sale of the mortgaged premises in this cause, and on motion of A. J. Poppleton, solicitor for the complainant, it is ordered by the court that the same be in all respects and in every particular confirmed. And after having carefully examined the proceedings of the said master in making such sale, and being satisfied that the same has been in all respects in conformity to the provisions of title fourteen, of the Code of Civil Procedure, it is ordered by the court that the clerk make an en-
118 try upon the journal of this court that the court is satisfied of the legality of such sale. And it is further ordered that the said Daniel

Gantt, esq., make to the purchaser thereof a deed of the mortgaged premises, and that the defendants in this suit, to wit, George C. Bovey, Robert B. Whitled, James G. Megeath, Virginia C. Megeath, and Andrew J. Simpson, are, and were by the decree of this court heretofore rendered in this cause, barred and foreclosed of all right, title, interest, and claim in or to the said premises as against the said complainant, and that the purchaser thereof have possession of said premises.

W. P. KELLOGG, *Judge.*

THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, J. H. Kellom, clerk of the district court of the first judicial district, do certify that the foregoing is a true and faithful copy of all proceedings had in the above-entitled cause on file and entered of record in this office.

Witness my hand and official seal, at Omaha, this 24th day of June, A. D. 1864.

[SEAL.] J. H. KELLOM, *Clerk.*

Costs in district court, paid	$107 65
Costs in supreme court, paid	31 20
This transcript, paid	31 35

Filed December 9, 1864.

REC. 218—8

Supreme Court of the United States,

DECEMBER TERM, 1866.

No. 130.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEBRASKA.

BRIEF OF APPELLANT.

In the district court for Douglas county, sitting in chancery, Samuel J. Parmalee filed his bill of complaint against James G. Megeath and *ux*, George C. Bovey, and Andrew J. Simpson, for the foreclosure of a mortgage and a sale of the mortgaged land.

The bill sets forth the mortgage debt as evidenced by a joint and several promissory note of Megeath & Bovey for $4,500, payable to the order of Robert C. Whitled, and as secured by a mortgage executed by Megeath and *ux* and Bovey, (Rec., pp. 3 and 4,) duly acknowledged on the 17th April, 1858, and duly recorded on the same day, (Rec., p. 4;) that the note and mortgage were by Whitled assigned to the complainant Parmalee on the 17th May, 1861, (Rec., p. 4.) The complainant charges that there is due on the said note and mortgage the sum of $4,764.

The bill states that Andrew J. Simpson has, or claims to have, some interest in the said mortgaged premises, or some part thereof, and prays that Simpson be made a defendant with Megeath and *ux* and Bovey.

The bill was duly taken as confessed against Megeath and *ux* and Bovey, (Rec., p. 9.)

Simpson first demurred, and his demurrer was overruled, (p. 7.) He afterwards answered, (pp. 9 and 10.)

He admits the making of the note and mortgage, and the recording of the latter, as alleged in the bill, (p. 10,) but leaves complainant to establish the amount due.

He says he (Simpson) "is the lawful owner of a portion of the premises and lands described in said mortgage and bill, *and was such lawful owner at the time* said mortgage and note were executed, *and for some time before;*" and he describes the portion so claimed. He then says that "he was so seized of said premises in fee simple on the 15th day of April, 1858" (two days before the mortgage) "by virtue of a deed from said George C. Bovey, and that on the same day the deed was duly recorded, after having been duly acknowledged, &c." "*And that this defendant paid to the said Bovey a valuable and adequate consideration therefor, as is expressed in said deed.*"

He further says "that some time in the month of August, A. D. 1860, this defendant learned for the first time that a pretended deed, purporting to have been made and executed by this defendant to the said George C. Bovey, conveying the said premises, bearing date the 17th April, 1858, but without being duly acknowledged, was upon the records of the said register's office; but this defendant positively alleges that said pretended deed is a forgery; that this defendant never executed said deed, or any other, conveying the said premises, or any part thereof. That this defendant never received any consideration for said deed from said Bovey, or anybody else; nor did this defendant ever authorize any one to execute said deed for him." And he further says that he "is the real and lawful owner of the said premises, *as above stated;* and that he *never parted with* his title to the said premises, or any interest therein, to any one *since he purchased the same from the said Bovey on said 15th April*, 1858."

He concludes by denying the complainant's ownership of the said note and mortgage, and says if he is owner, he purchased with full knowledge of his (Simpson's) rights, "and with full knowledge of said fraudulent and forged deed."

The bill called for answers "without oath," answers on oath

"being expressly ~~barred~~ waived," (p. 4.) A replication was filed, and proofs taken.

The district court decreed for the complainant, establishing his debt at $5,455 50, and directing a sale of the mortgaged premises. (Rec., pp. 53, 54.)

The decree was executed by sale, the gross proceeds being $1,025, of which the net sum of $917 38 was paid to the complainant, being a deficiency of $4,719 65; which sale was finally ratified and confirmed. (Rec., p. 56.)

Afterwards (Rec., p. 1) Simpson brought his appeal into the supreme court of the Territory, which court reversed the decree of the district court; and from that decree Parmalee brought his appeal to this court.

For the appellant, it will be maintained that upon the pleadings and evidence, the decree of the court below should be reversed.

From the aforegoing synopsis of the case it will have been observed that the appellee, Simpson, admitting the note and mortgage executed by Megeath & Bovey, rests his case upon two propositions asserted by him.

First. That the mortgaged property was conveyed to him by Bovey two days before the execution of the mortgage; and

Secondly. That the reconveyance of the same by him to Bovey on the day of the date of the mortgage was not his deed, but was a forgery by Bovey.

As to the first proposition, it is impossible to read the evidence in the record (and it is brief) without being satisfied that the pretended conveyance from Bovey to Simpson, on the eve of the execution of the mortgage, the terms of which were doubtless already agreed upon and arranged, was a mere trick and device of Bovey, of which Simpson was then wholly ignorant, (he not having arrived in Nebraska till several days afterwards,) but of which he subsequently took advantage. The land mortgaged was owned, in severalty, a portion by Megearth and the ~~reverse~~ residue by Bovey. When the treaty for the mortgage was pending, and on the day before it was executed,

and again on the morning of the very day, the records were examined by two witnesses, (King, p. 30, and Johnston, p. 32,) for the proposed mortgagee, and the title appeared to be still in Bovey. These witnesses both say their examinations were careful, and with suspicion as to Bovey, whom they describe as well known to be addicted to "tricks" and to "turning sharp corners." This deed from Bovey to Simpson could not then be found. It is not now produced. The defendant, Simpson, however, produces a certified copy from the record, as of a deed recorded on the 15th April, 1858, some thirty-six hours before the execution of the mortgage. The circumstances are certainly very suspicious, though they may not be sufficient to discredit the record as it subsequently appeared. Assuming, therefore, for the sake of the argument, that Bovey, of his own motion and device, caused this deed to be recorded immediatcly before the execution of the mortgage, it is certain that the grantee, Simpson, knew nothing of it. He has taken the pains to prove conclusively that he was on his way from California at the time, and did not arrive in Nebraska till three or four days afterward, and first ~~just~~ learned that such a deed had been executed from Bovey himself, after his arrival. In the mean time Bovey had executed the complainant's mortgage.

"Merely executing a deed, and delivering it to the register for registry, is no delivery, unless the grantee so direct it or subsequently agrees to it." (4 Kent Com., 454–5, note b; Maynard *vs.* Maynard, 10 Mass., 456; Sampson *vs.* Thornton, 3 Metc., 275.) Jouique vs Gibeau - 3. Wale. 636-

But even if the deed were recorded, it was not acknowledged, and so passed no title. The deed itself is not produced by Simpson, but a copy only. Simpson says he has lost the original. But Sayre, the notary public, proves that he never took such an acknowledgment. (Rec., p. 12.)

Again: there was manifestly no consideration paid by Simpson to Bovey. The attempt, by vague and general language, in his (Simpson's) own deposition, to imply such consideration, is futile, and only serves to make the fraud more evident.

For some unexplained reason, Bovey placed on record, on the same day of the execution of the mortgage, a ~~recovery over~~ reconveyance from Simpson. Doubtless he knew that he was the real owner all the time, and perhaps he thought, by this ingenious contrivance, to cut out the mortgage, executed in the interm between the two days, and while the title was apparently in Simpson. This ~~recovery over~~ is proved to be a forgery, as is the pretended certificate of the same notary, Sayre.

Upon the whole case, Bovey and Simpson appear to be confederates in the attempt to defraud the mortgagee, and to have the land between them, free of its obligation.

It is submitted that the decree of the district court was right, and that the decree of the supreme court of the Territory was erroneous, and ought to be reversed.

J. M. CARLISLE,
For Appellants.

SUPREME COURT

OF

THE UNITED STATES.

APPELLEE'S BRIEF.

SAMUEL N. PARMELEE *et al Appellants*,
vs.
ANDREW J. SIMPSON, *Appellee*.

This is a suit to foreclose a mortgage given by George C. Bovey and James G. Megeath to R. B. Whitted on about 400 acres of land near Omaha, to secure the payment of $4,500 in six months after date. The bill alleges that the mortgage was executed and recorded on the 17th of April, 1858; and it is further alleged that on the 17th of May, 1861, the mortgage and note were assigned to Samuel N. Parmelee, the appellant. Megeath and Bovey, the mortgagors, are made defendants in the bill, and also Simpson, the appellee, alleging that he, Simpson, claims some interest in a portion of the mortgaged property, and he is called upon to show by answer what that interest is.—See Mortgage Note, Fol. 251 to 258.

Megeath and wife waive the service of subpoena on them and immediately enter their appearance in Court by their Attorney.—See Fol. 35. Bovey being a non-resident, service was made on him by publication, but he failed to appear and the bill was taken pro confesso against him, and also against said Megeath and wife.—See Fol, 36.

Thus the suit was disposed of as against all the defendants except Simp-

son, who having been served with subpoena did on the 19th of October, 1861, file his answer to the bill. This answer admits the execution and recording of the mortgage, but leaves the complainant to his proof of the amount due thereon. It further sets up the fact that Simpson was on the 15th of April, 1858, seized of the east half of the south-east quarter of section 29, and the west half of the south-west quarter of section 28 township 15 north of range 13 east, being a part of the mortgaged premises, by deed from Bovey of that date, and that the same was duly executed and recorded in the Register's office of Douglas county on that day; and that he paid said Bovey a valuable and adequate consideration therefor, as expressed in the deed. The answer further alleges that in August 1860, Simpson learned for the first time that there appeared on the records of said Register's office a forged deed purporting to be a conveyance of said lands by Simpson and Bovey, bearing date April 17th, 1858, and that the same was not acknowledged. Simson denies the making of any such deed, and alleges that he was totally ignorant that any such deed existed till the time aforesaid—alleges it to be a forgery, and that he is still the lawful owner of said 160 acres.—See Fol. 37 to 35.

To this answer the complainant filed a replication, and the cause was then referred to a Maseer to take and report the proofs.

I.

The mortgage had been paid when the suit was commenced in the Court below, and it therefore ceased to be a lien on the lands, though not canceled on the records.—See testimony of Sapp, Fol. 96 to 114. He declines to answer questions put to him relative to the term of assignment, on the ground that the matters sought to be elicited were confidential. There must have been an understanding about the mortgage outside of the assignment which would have been suspicious, or Sapp would have answered the questions put to him. The complainant testifies (See Fol. 172 to 196) that Megeath was present when the assignment was made—says he paid Whitted $700—$500 in cash and an old buggy at $200. And it appears that Megeath at the same date of the assignment paid to Whitted $1,100, and the indorsement of this payment follows the assignment on the note, but both bear the same date. Parmelee swears that he supposed that there was due on the mortgage about $5000, and besides he swears that he told Megeath that all he wanted was to make a liberal interest out of the transaction.—See Johnson's testimony, Fol. 208 to 221. He swears that Megeath was present when the arrangement was made, and that Megeath paid $1,400 or $1,500; that Megeath told Whitted to come down to Parmelee's office after dinner and they would try and fix the matter up, and they went there and it was fixed up; witness understood that Megeath had taken up the mortgage.—The testimony also shows that Megeath is a man of large means, and it also shows that he was the most prominent in negotiating and fixing up this as-

signment; that he paid at the time at least $1,100, and Parmelee only $500 and an old buggy. Was it not a strange transaction for Megeath, a man of ample means, to not only permit but to labor to get a man to buy a mortgage against him for $5,000, and pay for the same less than $700, and then for that small sum to hold a mortgage over him for $5,000? Was it not the sole and only object of Megeath in this transaction to use Parmelee as an instrument to defraud Simpson out of his land?

We then insist that taking all the testimony and circumstances together, it appears beyond a question that the mortgage was paid when the suit was commenced, and that the same is only kept on the records for the purpose of absorbing the lands owned by Simpson.

But if the mortgage was a lien at all, it could have been for only $700 and interest from the date of the assignment, and no more, and the decree in excess of that amount is in any event erroneous. And further, as there is more than 200 acres of land covered by the mortgage, not in dispute, that should be first sold and the proceeds applied in payment of that sum.

II.

That at the time the mortgage was executed, to wit: on the 17th of April, 1858, Simpson was the lawful owner of the 160 acres before referred to, by a deed legally executed by Bovey to him on the 15th of April, two days before, and on that day duly recorded in the Register's office of the county where the land is situated.

1. The original deed is proven to be lost.—See testimony of Simpson, Fol. 115 to 137. He swears that he has made frequent search for the deed among all his papers where he left the deed and has been unable to find it, believes it to be lost.
2. The 13th section of the Recording Act provides that "the record or a certified copy thereof may be read in evidence with like force and effect as the original deed, whenever by the party's own oath or otherwise the original is known to be lost; or, not belonging to the party wishing to use the same, nor within his control."

It is the well settled rule at common law that where the testimony of the party wishing to use the instrument shows with a reasonable certainty that the original is lost or beyond his control, that then he may establish the contents by parol proof. See

7 Peters, 99. 8 Peters, 30.
6 Peters, 352.
2 Phillipps, Ev. Cow. & Hill, notes 260-266, and authorities there cited.
9 Wheat. 581.

3. But in the case of instruments which by law are required to be recorded by a public officer sworn to faithfully discharge his duties, the reason for the exclusion of secondary evidence is greatly diminished. The reason

why the Courts throw these guards around the admission of this class of testimony, is the uncertainty of parol proof in establishing with certainty the contents of a lost paper, as the sole reliance must be then on the memory of the witnesses. And after the lapse of time this testimony still becomes more unreliable. But when a certified copy of a lost instrument is offered in evidence to establish the contents of the original, hardly a chance for a mistake can occur, for the officer who made the record is presumed to have faithfully transcribed the original, and the evidence of the transaction rests as much in writing as the original, for it is the original reproduced on the public records. The uncertainty of the memory has nothing to do with this class of testimony.

But the appellates claim that this deed is a forgery, and they rely on the testimony of witness Sayre to establish the fact—(see his testimony, Fol. 55 to 64.) The testimony of this witness is somewhat remarkable.—He first testifies that he was very careless with his seal of office; that it was accesible to all persons. He then swears he believes he never took the acknowledgment of the deed in question; that he spells his name Sayre and not Sayer; that he never wrote certificates of acknowledgments with the words "Be it remembered," &c., and that about two years afterwards he, as agent, was negotiating for the same land. On cross-examination he says he might have acknowledged the deed, but don't believe he did. The testimony of Davis, Redick, Kellum, Hitchcock, Reed, Lake, Poppleton and Woolworth was taken as to the genuineness of Sayre's signature to the acknowledgment of the forged deed from Simpson to Bovey—(see Fol. 222 to 248.) This testimony had nothing to do with the genuineness of the deed from Bovey to Simpson, and if it has any bearing in the case it shows that Sayre is mistaken when he says he took no acknowledgment for Bovey in April, 1858, as the preponderance of this testimoney is in favor of the genuineness of Sayer's signature to the forged deed.

This testimony of Sayre's is indeed remarkable. How can a Notary Public swear so positively after the lapse of several years that he did not acknowledge a deed, when he was in the constant habit of doing that kind of business? No acknowledging officer can recall to mind one tenth of the instruments which he may have acknowledged. It is the work of only a moment and quickly passes from the mind. And as to the description of the lands in deeds, it is very seldom that the Notary knows anything about that unless he keeps a record, and if Sayre kept a record of his acknowledgments why did he not refer to that in his deposition, to show conclusively that he never took the acknowledgement? And it is upon this testimony alone that the appellate hopes to establish the forgery of the deed from Bovey to Simpson. The very idea of that deed being a forgery is most glaringly absurd. Why should Bovey forge a deed to his own land? What possible motive could he have? He could not defraud any one by it. The land was his own and at that time unincumbered, and all he had to do was to go before a Notary and sign and acknowledge the deed. He could not very

well forge his own signature, and there could be no possible motive or inducement for him to make the conveyance in any other than the usual manner. He could not even have desired secrecy in the matter, for he immediately gave the deed publicity by placing it on record.

III.

The deed from Bovey to Simpson was in law properly delivered on the 15th of April, 1858.

There are two kinds of delivery.

1. An EXPRESS delivery, as where the deed is placed directly in the grantee's hands, or in the hands of his agent.
2. IMPLIED or CONSTRUCTIVE delivery, as where a deed is placed in the hands of the Recorder for the use and benefit of the grantee, or when it is transmitted by mail to the grantee, or otherwise, the same is in law a good delivery. The delivery of the deed in question comes within the latter class. See

2 Bour. Inst. 395, and cases there cited.
Verplank et al, vs. Sterry, et al 12 John 535, 545.
1 Wheeler, Eq. Dig., 242.
Dawson vs. Dawson, 1 Rice Eq. Rep., 243.
Ingraham vs. Porter, 4 McCord Eq. Rep., 198.
Tate vs. Tate, 1 Dev. & Batt., 26.
Gardner vs. Collins, 3 Mason, 398.
——— vs. Swift, 18 Conn., 257.
Lady Superior vs. McNamara, 3. Barb. Ch., 375.
Rathbun vs Rathbun, 6 Barb., 98.
Lessee of Mitchel vs. Ryan, 3 Ohio, New Series. 377.
14 Ohio, 307.
Boody vs. Davis, 2. N. H., 140.
1 Edw. Ch., 497.
5 Humph., 44.
3 McLean.
40 Maine.
6 Iowa.

3. In the case at the bar the arrangement for the sale of the land was made in December, 1857, by letter from Bovey to Simpson. It appears from the testimony that Bovey was indebted to Simpson, who then resided in California, in a large amount, and that to pay that indebtedness Bovey wrote Simpson that he would convey the land to him; and in view of this fact Simpson left California and arrived in Omaha on the 18th of April, 1858, and on the next day Bovey took Simpson on the land and told him this was the property which he had deeded to him—(See testimony of Simpson, Fol. 116 to 133.) Now what was the INTENTION of Bovey in this matter? Was it not to make a complete conveyance of the land to Simpson? And this INTENTION is what the authorities point to as decisive of the

delivery. If this is wanting then there is no delivery even though the deed may be put into the hands of the grantee; and if the grantee intends to pass the title it is wholly immaterial whether the grantee ever obtains the corporeal possession of the instrument or not. It would be wholly unsafe for persons living at a distance from each other to do business affecting the title to real estate, if the rule claimed by the appellee were to obtain.—Take this case: A. who resides in Ohio, is a creditor of B., who owns land and resides in Neoraska. A wants his pay. B. writes him that he will make him a deed of a certain piece of land in satisfaction of the debt, and does so, and places the deed on record; and thereupon A. starts for Nebraska to look after the property. Two days after the deed is recorded, C., who is bound to take notice of the records, takes a mortgage on the land. Now would the common principles of justice dictate, or would any Court hold the mortgage paramount to A's title? We think not.

The deed was properly recorded on the 15th day of April, 1858, two days before the mortgage was executed.—Fol. 264 to 268.

But the appellants have thought proper to attack this record—in other words they seek to impeach and set aside a public record, and that too by the oral testimony of witnesses three or four years after the transaction!—(See the testimony of King and Johnson, Fol. 152 to 170.) King swears his occupation is "Deputy Sheriff," and that Whitted employed him to prepare the mortgage and look up the title, but fearing that he may not attend to the matter properly, the services of Johnson, who swears he is a "farmer" by occupation, were obtained. Both of these witnesses swear that after the most "careful" examination they could find no conveyance of the land from Bovey to any one, and that they were particular in the matter because Bovey was so "tricky," and was in the habit of "turning short corners." All of this testimony is objected to on the ground that it is incompetent to impeach and set at nought a public record. And the objection was well taken. If public records can be set aside in this cheap way, what safety can there be in dealing in real estate? What avail are recorded titles if this kind of testimony be permitted to overturn them! If the Register has failed to do his duty he is liable on his bond to the party injured.

1 Kelley, 475.
7 U. S. Dig., 245.
4 McLean, 138.

But why did not Whitted get the Register of Deeds to make the examination, and why did not the appellants call upon the Register to testify about this record? He preferred to rely upon the "Deputy Sheriff" and the "farmer."

The Index, which was exhibited to the Court below, shows the entry fairly made, and in its order; and Byron Reed, when called as a witness by the appellate, so testifies. (See his testimony, Fol. 150 to 152; see, also, the 19th Sec. of the Recording Act.) When the deed was properly indexed

it was notice to all the world of the rights of Simpson, and it is wholly immaterial whether the deed was ever spread on the record or not.

Sec. 19 of the Recording Act is as follows:

"The County Clerk must indorse upon every instrument properly filed in his office for record, the minute, hour, day, month and year when it was so filed, and shall forthwith make the returns *in the index* provided for in the last preceding section, except that of the book and page, where the recorder of the instrument may be found, *and from the time of such entry shall furnish constructive notice to all the world* of the rights of the grantee *confirmed by such instrument.*"

REDICK & BRIGGS,
Solicitors for Appellate.